



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0017

BOARD ORDER

IN THE MATTER OF

NORDIC AQUAFARMS, INC) APPLICATIONS FOR AIR EMISSION,
Belfast and Northport) SITE LOCATION OF DEVELOPMENT,
Waldo County, Maine) NATURAL RESOURCES PROTECTION ACT, and
) MAINE POLLUTANT DISCHARGE ELIMINATION
A-1146-71-A-N) SYSTEM/WASTE DISCHARGE LICENSES
L-28319-26-A-N)
L-28319-TG-B-N)
L-28319-4E-C-N) FOURTH PROCEDURAL ORDER
L-28319-L6-D-N)
L-28319-TW-E-N)
W-009200-6F-A-N)

This procedural order documents the Board’s decisions on the appeals of the Third Procedural Order regarding the issues that will be the subject of the Board’s hearing on Nordic Aquafarms’ applications for a land-based aquaculture facility. It also provides the deadlines for the filing of testimony and exhibits and sets the week the hearing will be held.

1. Appeals of the Third Procedural Order

- A. On November 1, 2019, Presiding Officer Duchesne issued the Third Procedural Order in the Nordic Aquafarms’ (Nordic) proceeding. Section 1(C) of the order identified the issues that will be the subject of the Board’s hearing. In that order, the hearing issues were narrowed to allow the Board and the parties to focus hearing time on issues that are most in dispute and for which live testimony and cross-examination of witnesses will most assist the Board in evaluating the evidence. For the non-hearing issues, Nordic’s applications will be judged on the written submissions of the applicant, the intervenors, and members of the public. The deadline for filing of any appeal of the Presiding Officer’s ruling was November 5, 2019.
- B. The Board received two appeals of the Presiding Officer’s rulings regarding the issues to be addressed at the hearing.
- C. On November 4, 2019, the Intervenor Group made up of Jeffrey Mabee, Judith Grace, and the Maine Lobstering Union appealed the Presiding Officer’s ruling in Section 1(D) of the Order that the issue of whether the applicant has demonstrated sufficient Title, Right or Interest (TRI) in all the property proposed for development or use will not be a hearing topic. They requested that TRI be a topic at the hearing, with testimony of witnesses and cross-examination.

- D. In its filing dated November 5, 2019 Intervenor Upstream Watch requested clarification of the Presiding Officer's ruling regarding "impacts to existing uses from construction and operations, including blasting and odor." Upstream Watch questioned whether this issue area would include testimony on Nordic's Air Emissions application including the issues of air pollution, noise, and odor. In the event Nordic's Air Emissions application was not intended to be included within that category, Upstream Watch requested that it be added to the list of issues for the hearing.
- E. In its response dated November 5, 2019, Nordic requested that the Board deny the appeal of Jeffrey Mabee, Judith Grace, and Maine Lobstering Union and uphold the Presiding Officer's decision to exclude TRI from the list of hearing topics. With respect to Upstream Watch's appeal, Nordic argued in its November 6, 2019 submission that inclusion of the Chapter 115 Air Emissions application as a hearing topic was not warranted and that any comments on the application could be addressed through written submissions.
- F. At its meeting on November 7, 2019, the Board heard oral argument on the appeals.
- G. Following oral argument on the matter of TRI, the Board voted 4-0 in favor of a motion to deny the appeal of Intervenor Jeffrey Mabee, Judith Grace, and Maine Lobstering Union and uphold the Presiding Officer's ruling that TRI will not be an issue for oral testimony and cross-examination at the hearing. It was noted that the issue could be addressed through written submissions.
- H. With respect to air emissions from the proposed project, following oral argument by Upstream Watch and Nordic, the Board asked Department staff to address the air emissions concerns voiced by Upstream Watch. Department staff commented that Upstream Watch has raised issues that would benefit from further examination, possibly including modeling, and recommended that Nordic's Air Emissions application be included as a hearing issue. In response to questioning, staff commented that Nordic's Air Emissions application is limited to a request for a Chapter 115 permit for eight diesel generators. The Board then voted 4-0 in favor of a motion to include Nordic's Air Emissions application as a hearing issue.
- I. While the Board added testimony on Nordic's Air Emissions application to the list of hearing issues, parties are advised that examination of Nordic's Air Emissions application is limited to the licensing criteria set forth in Chapter 115 of the Department's rules. The issues of noise and odor that were included in Upstream Watch's submissions regarding air emissions are not licensing criteria under Chapter 115.

To further clarify, pursuant to the Third Procedural Order, noise from the proposed development is not an issue for the hearing. Parties may submit written comments on whether the proposed project meets the noise criteria under Site Law, but the parties should be aware that pursuant to the Site Law, 38 M.R.S. §484 (3)(A), construction noise generated between the hours of 7 a.m. and 7 p.m. or during daylight hours, whichever is longer, is exempt from review by the Board. Odor is listed in the Third Procedural Order

as one of the issues that may be addressed at the hearing under the Site Law criteria, as further set forth in Chapter 375, §17 of the Department's rules.

2. Format, Testimony, and Exhibits

- A. The form for testimony is set forth in Chapter 3, § 3(A) of the *Department's Rules Governing the Conduct of Licensing Hearings*. Written testimony must be sworn. As set forth in Chapter 3, § 16(C), written testimony is sworn if "the witness declares by oath or affirmation that the testimony is true and correct to the best of the witness's knowledge and belief."
- B. Testimony and exhibits should be submitted in an unalterable format, preferably as a PDF. For technical witnesses, the witnesses' credentials should be submitted as an exhibit with their pre-filed testimony. Exhibits must be identified and numbered sequentially as follows:
- Applicant: Nordic 1, Nordic 2, etc.
 - Northport Village Corp / Upstream Watch: NVC/Upstream 1, etc.
 - Jeffery Mabee and Judith Grace / Maine Lobstering Union: MG/MLU 1, etc.
 - Eleanor Daniels and Donna Broderick: D/B 1, etc.
 - University of New England: UNE 1, etc.
 - Gulf of Maine Research Institute: GMRI 1, etc.
 - The Fish Are Okay: TFAO 1, etc.
 - Lawrence Reichard: Reichard 1, etc.

While there may be gaps in numbering, numbers should not be repeated.

Electronic copies of testimony and exhibits must be similarly named; for testimony, the document name must include the name of the witness; for exhibits, the document name must begin with the appropriate party designation and identifying number.

- C. The Board will not accept links to documents; the documents, or relevant portions thereof, must be submitted as exhibits.
- D. In instances where a witness is referring in his or her testimony to a specific portion of a document that is already in the record, the relevant portion must be appended as an exhibit to that witness' testimony. For example, if a witness directs the reader to a specific table in the application, a copy of the table should be appended as an exhibit to the testimony for clarity and ease of reference. If testimony includes an excerpt from a document, the excerpt must be clearly identified as to source and sufficient context provided so that the reader can comprehend the testimony without the need to refer to the complete document. If a witness is referring in his or her testimony to a document that is not already in the record, that document must be included as an exhibit. If a party wishes to include only a portion of a document due to the document's size, the party should include a sufficient portion of the document to establish context.

- E. Any proposed exhibits that are compilations of data in the form of charts, tables, graphs, etc. taken from various documents in the record that are newly created for the purpose of this proceeding must be clearly labeled as to source and must be submitted with the witness' pre-filed testimony.
- F. The introduction at the hearing of additional exhibits which are revised or reformatted pre-filed exhibits are not likely to be permitted because the other parties will have reviewed the evidence and formulated cross-examination using the exhibits as presented in the pre-filed testimony.
- G. Parties should submit all exhibits upon which they will be relying with either their pre-filed direct testimony or pre-filed rebuttal testimony. At the discretion of the Presiding Officer, some new exhibits may be admitted at the hearing if used for the purpose of impeachment.

3. Filing of Testimony and Exhibits

The original signed copy of all testimony must be filed with the Board. In addition, each party is required to file with the Board an electronic copy and 15 paper copies of its testimony and exhibits for distribution to Board members and Department staff.

Each party is required to provide an electronic copy of its testimony and exhibits to each of the other persons on the service list by the filing deadline. If a party requests a paper copy of testimony and exhibits, one paper copy must be provided to that party. Paper copies may be sent via first class mail on the filing deadline.

Pre-filed testimony and exhibits will be posted on the Department's webpage for review by members of the interested public.

Over-sized exhibits may be minimized for filing and distribution purposes and the full-sized exhibit brought to the hearing for use. The Board requests that Nordic provide a large-scale plan of the proposed project for use at the hearing. The details of that plan may be discussed with Department and Board staff.

This order establishes the following schedule:

1. Friday, December 13, 2019 at 5:00 pm: deadline for the parties to pre-file their direct testimony on the hearing issues.
2. Friday, December 20, 2019 at 5:00 pm: deadline for any objections to pre-filed direct testimony.
3. Friday, December 27, 2019 at 5:00 pm: deadline for any responses to objections to pre-filed direct testimony. The Presiding Officer will then rule on any objections to direct testimony.

4. Friday, January 3, 2020 at noon: deadline for any appeal to the Board of the Presiding Officer's ruling on objections to direct testimony.
5. Thursday, January 9, 2020: The Board will hear any appeal of the Presiding Officer's ruling on objections to testimony.
6. Friday, January 17, 2020 at 5:00 pm: deadline for filing of rebuttal testimony.
7. Friday, January 24, 2020 at noon: deadline for any objections to rebuttal testimony.
8. Wednesday, January 29, 2020 at noon: deadline for any responses to objections. The Presiding Officer will then rule on any objections to rebuttal testimony.
9. Monday, February 3, 2020 at noon: deadline for any appeal to the Board of the Presiding Officer's ruling on objections to rebuttal testimony.
10. Thursday, February 6, 2020. The Board will hear any appeal of the Presiding Officer's rulings on objections to rebuttal testimony.
11. The hearing is scheduled for the week of February 10, 2020.
12. The deadline for written comments on non-hearing issues submitted by the parties or the general public is the close of the hearing unless the Presiding Officer sets another date or determines that the record should be held open beyond the close of the hearing to receive specific information requested by the Board.

A pre-hearing conference is scheduled for Thursday, January 9, 2020 immediately following the Board meeting.

DONE AND DATED AT AUGUSTA, MAINE THIS 8th DAY OF NOVEMBER, 2019.

BOARD OF ENVIRONMENTAL PROTECTION



BY: _____

Robert S. Duchesne, Presiding Officer