



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

BOARD ORDER

IN THE MATTER OF

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| 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 (MEPDES)/WASTE DISCHARGE LICENSE |
| L-28319-26-A-N |) |
| L-28319-TG-B-N |) |
| L-28319-4E-C-N |) TWELFTH PROCEDURAL ORDER |
| L-28319-L6-D-N |) |
| L-28319-TW-E-N |) |
| W-009200-6F-A-N |) |

The Board of Environmental Protection (Board) held an adjudicatory hearing in Belfast from February 11 through February 14, 2020 on Nordic Aquafarm, Inc.’s (Nordic’s) applications for an Atlantic salmon land-based aquaculture facility proposed to be located in Belfast and Northport. This procedural order documents decisions made on post-hearing submissions.

1. Comments on Technical Ability

On February 18, 2020, Michael Lannan, witness for Intervenors Upstream Watch and Northport Village Corporation (Upstream/NVC), filed a letter commenting on Nordic’s technical ability to design, construct, operate, and maintain the proposed project in a manner consistent with state environmental standards (38 M.R.S. § 484(1) and Chapter 373, § 3 of the Department’s rules).

On February 19, 2020, Joanna Tourangeau, on behalf of Nordic, commented that Mr. Lannan’s submission addresses matters within the scope of the hearing topics and, therefore, she assumed it would not be included in the administrative record, in essence filing an objection to Mr. Lannan’s filing.

Ruling: Technical ability is a licensing criterion that was not identified as a hearing issue. As such, written comment on the applicant’s technical ability was allowed pursuant to the Third Procedural Order, § 1(C). While Mr. Lannan’s comments touch on a number of licensing criteria, some of which were hearing topics, the submission is basically a comment on Nordic’s technical ability to meet the licensing criteria rather than a detailed analysis of

the evidence presented on any given criterion. Mr. Lannan's submission is therefore admitted to the record as a comment on technical ability.

2. Comments on Additional Air Dispersion Modeling

At the close of the hearing on Nordic's applications, the record was held open for additional information on specific topics as stated at the hearing and documented in the Eleventh Procedural Order.

On February 24, 2020, Mr. Lannan, on behalf of Upstream/NVC, submitted a letter requesting clarification of the extent of the additional air dispersion modeling that will be conducted by Department staff and proposing a re-modeling/re-permitting meeting to discuss the scope and protocols for the Department's additional modeling. Mr. Lannan's letter also included comments on Nordic's air emissions application, which was the subject of testimony at the hearing.

Ruling: The Department's air emissions dispersion modeling analysis of Nordic's application is documented in a memorandum to the file from Kevin J. Ostrowski, DEP Senior Meteorologist, dated December 18, 2019. Following testimony at the hearing, Department staff stated that the Department would be doing additional air dispersion modeling in its analysis of the information gained during the hearing process. As stated in the Eleventh Procedural Order, the parties will have an opportunity to comment on the staff's additional modeling after it has been completed. Because Mr. Lannan's letter contains additional evidence on a hearing topic and does not consist of comments on the results of the Department's additional modeling, which the staff has yet to complete and share with the parties, it is not admitted to the record.

3. Comment on Nordic as Closed Loop System

On February 18, 2020, Anne Saggese, an officer of Intervenor The Fish Are Okay, submitted an email on behalf of herself based upon her professional experience with agriculture and food systems. The letter comments on recirculating aquaculture systems, water use, and wastewater re-use. It is essentially sur-rebuttal to testimony presented at the hearing by Upstream/NVC.

Ruling: The hearing procedures did not provide for sur-rebuttal after the close of the record. Ms. Saggese's email is therefore not admitted to the record.

4. Renewed Motions to Dismiss Permit Applications

On February 14, 2020, Ms. Kim Ervin Tucker, on behalf of Intervenor Jeffrey Mabee, Judith Grace, Lobstering Representatives (MGL), and non-intervenor Friends of the Harriet L. Hartley Conservation Area (Friends), filed "Response in Opposition to Proffered Nordic Exhibit 41 and Renewed Motion to Dismiss Pursuant to 06-096 C.M.R. ch.2, §11.D." On February 18, 2020, Ms. Tucker filed "Renewed Motion to Dismiss for Applicant's Lack of Administrative Standing (Title, Right or Interest "TRI") Pursuant to 06-096 C.M.R. ch. 2, §11.D."

With respect to Nordic Exhibit 41, Ms. Tucker argues that the exhibit was offered to impeach MGL witness Paul Bernacki regarding a statement in Mr. Bernacki's testimony that had been stricken from the record (Ninth Procedural Order). Ms. Tucker's motion requests that Nordic Exhibit 41 "not be considered by the Board for any purpose" (motion at page 4).

In the motions regarding TRI, Ms. Tucker argues that Nordic does not hold title to the intertidal area proposed for the location of its proposed pipelines. The motions append as exhibits a number of documents pertaining to the ownership history of the contested property. The February 18, 2020 motion requests that the Board dismiss Nordic's applications for lack of TRI pursuant to 06-096 C.M.R. ch. 2, §11(D). In the alternative, the petitioners request "...prior to any substantive review of these applications proceeding, that the Board conduct an adjudicatory hearing on the specific issue of NAF's (Nordic's) TRI, prior to expending any further public or private resources on the substantive review of NAF's permit applications." (motion at page 23).

Ruling: With respect to Nordic Exhibit 41, the motion is denied. As set forth in the Eleventh Procedural Order, Nordic Exhibit 41 was not admitted to the hearing record because TRI was not a hearing issue. That Order states that the exhibit may be submitted as written comment. Nordic Exhibit 41 will be considered by the Board along with all comment submitted to the record on the issue of TRI. Mr. Bernacki's statements regarding TRI that were stricken from his pre-filed testimony will be considered as comment.

The motions to dismiss Nordic's applications for lack of TRI and to conduct an adjudicatory hearing on the issue of TRI will be considered by the Board on a date to be set shortly. The deadline for the applicant and any intervenors to comment on Ms. Tucker's motions is Thursday, March 12, 2020 at 5:00 p.m. The materials attached to Ms. Tucker's February 14th and February 18th submissions will be provided to the Board. If a party responding to the motion wishes the Board to consider other documents, those documents should be provided. Please do not duplicate documents attached to Ms. Tucker's submissions of February 14th and 18th.

Any appeal of the rulings in Sections 1, 2, and 3 of this procedural order must be filed by Thursday, March 12, 2020 at 5:00 p.m.

DONE AND DATED AT AUGUSTA, MAINE THIS 2nd DAY OF MARCH, 2020.

BOARD OF ENVIRONMENTAL PROTECTION



BY: _____
Robert S. Duchesne, Presiding Officer