



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 (MEPDES)/WASTE DISCHARGE LICENSE
L-28319-26-A-N)
L-28319-TG-B-N)
L-28319-4E-C-N) THIRTEENTH 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 Aquafarms, Inc.'s (Nordic's) applications for an Atlantic salmon land-based aquaculture facility proposed to be located in Belfast and Northport. At the conclusion of the hearing, the record was left open for specific documents as set forth in the Eleventh Procedural Order. This procedural order documents rulings made on additional post-hearing submissions and motions.

1. Sediment Sampling

At the conclusion of the hearing, the Presiding Officer held the record open for submission of Nordic's coastal wetland boring logs that were referenced during the hearing.

In accordance with Section 6(C) of the Eleventh Procedural Order, on February 18, 2020, Nordic submitted boring logs for nine core samples from the coastal wetland taken by its consultants in November 2018. The submission consisted of a Field Report prepared by Woodard and Curran of two written pages and nine photographs.

By electronic mail to Department and Board staff on February 21 and 28, 2020, Kim Ervin Tucker, on behalf of Intervenor Jeffrey Mabee, Judith Grace, and the Lobstering Representatives (MGL), requested that Nordic be required to submit all sediment log data including that submitted to the U.S. Army Corps of Engineers (USCOE) and argued that Nordic should be required to sample and test sediment in accordance with the protocols in the Penobscot River Mercury Study (PRMS).

Department staff responded to MGL's February 21, 2020 request by electronic mail on February 25, 2020 with a link to material in Nordic's Site Law application which appears to include the sediment sampling information that Nordic submitted to USCOE.

Ruling: MGL's request that the Board require Nordic to submit the test results for all core samples taken by Nordic in 2018 and to require Nordic to sample and test sediment in accordance with the protocols in the Penobscot River Mercury Study (PRMS) is denied. With respect to the information submitted to USCOE, much of the information requested by MGL appears to have been included in Nordic's Site Law permit application. The Board and Department staff will evaluate whether Nordic's applications meet the licensing criteria based on the evidence submitted.

2. Proposed Dredging in the Coastal Wetland

At the conclusion of the hearing, the Presiding Officer held the record open for the Department of Marine Resources' (DMR) assessment of the potential impacts of Nordic's proposed dredging in the coastal wetland, and the parties' responses to that assessment.

On March 2, 2020, DMR held a hearing in Belfast to receive comment on Nordic's proposal to dredge in the coastal wetland for the installation of its proposed pipelines. At the end of the hearing, DMR provided an additional ten days for written comment to be submitted to DMR.

In a March 3, 2020 email to Board, Department, DMR, and USCOE staff, MGL commented on DMR's hearing and requested that the following documents from DMR's hearing be added to the Board's record: a copy of the proposed haul route for the dredge spoils submitted by Nordic at the DMR hearing, and a copy of the testimony of Dianne Kopec regarding findings in the PRMS. MGL further requested that Nordic be required to conduct sediment sampling and testing along the proposed pipeline route and proposed dredge spoils haul route using the methodology used in the PRMS.

On March 4, 2020, MGL, in an email to Board staff, copied the Board on MGL's March 2, 2020 request to DMR Commissioner Keliher (on behalf of several entities) that DMR hold an adjudicatory hearing on Nordic's proposal. In that filing with the Board, MGL argued that, based on what was said at the DMR hearing, Nordic had materially changed its proposal and requested that the Board re-open its record for further proceedings including an adjudicatory hearing by the Board on the potential impacts of Nordic's project. MGL reiterated this request in an email dated March 7, 2020 to Board and Department staff and requested a public discussion of the need for testing, notice, hearing, and comments on Nordic's proposal pertaining to dredging and dredge spoils management and disposal. On March 10, 2020, MGL requested that the Board instruct Nordic to file corrected applications or dismiss the applications.

On March 5, 2020, Michael Lannan, on behalf of Intervenor Northport Village Corporation (NVC) also requested that the Board re-open its hearing to receive comments on the wastewater pipeline construction and discharge topic.

By electronic mail on March 10, 2020, Joanna Tourangeau responded on behalf of Nordic to MGL's submissions. Nordic, citing to information in the record, argued that its applications had not been materially changed and requested that MGL's communications on this issue be stricken from the record. Nordic further requested that the Board impose sanctions on MGL in response to MGL's repeated accusations of misconduct and malfeasance against Nordic.

Ruling: Pursuant to Chapter 3, §§ 4(C)(8) & (12), and § 24, the requests by MGL to require Nordic to conduct additional sampling and testing of sediments in accordance with the PRMS standards, admit a map of the proposed haul route and Dr. Kopec's testimony from the DMR hearing, re-open the Board's record and hold an adjudicatory hearing on Nordic's proposed dredging and dredge spoils management, and file corrected applications or dismiss Nordic's applications as incomplete are denied. Pursuant to §§ 4(C)(8) & (12), and § 24, NVC's request to re-open the record and receive additional comments on Nordic's proposed wastewater pipeline construction and discharge and to admit the two maps attached to NVC's request is also denied.

At the close of its hearing, the Board held the record open for the limited purpose of receiving specific information and documents as stated at the hearing and documented in the Eleventh Procedural Order. Nordic subsequently supplied information in response to the Board's request for copies of sediment boring logs taken in the coastal wetland. MGL points to no authority by which the Board may order the applicant to conduct additional sampling and testing of the sediments. The Board and Department staff will evaluate Nordic's applications based on the evidence in the record.

With respect to information presented at DMR's hearing, the Board's hearing record was left open for the limited purpose of receiving DMR's assessment of potential impacts from Nordic's proposed dredging in the coastal wetland, not to receive additional evidence or exhibits from the parties. DMR's assessment will be incorporated into the Board's record and shared with the parties. As set forth in the Eleventh Procedural Order, Nordic will have one week to file its response to DMR's assessment. The Intervenors will have ten days following Nordic's response to submit comments on DMR's assessment.

Additionally, in response to Nordic's request that MGL's comments in the above cited emails regarding Nordic's applications be stricken from the record, the emails are in the nature of argument and not part of the evidentiary record that will be considered by the Board in its review of the applications; however, they remain in the administrative record of this proceeding pursuant to Chapter 3, § 29(B) of the Department's Rules. Nordic's request that the Board impose sanctions against intervenors is denied.

3. Submission of Post-Hearing Briefs and Schedule for the Proceeding

On March 4, 2020, in an email to Board staff, Nordic requested that the deadline for the filing of post-hearing briefs be set at two weeks from circulation of the hearing transcript.

On March 4, 2020, Kristin Racine, on behalf of Intervenor Upstream Watch, requested that the deadline for the filing of post-hearing briefs and proposed findings of fact be set at 30 days from the close of the record.

In an email to Board staff on March 5, 2020, NVC requested that the parties have 30 days from the close of the record to draft post-hearing briefs, and that NVC have an additional 45 days to hold a public meeting to gather public input on NVC's brief prior to filing with the Board. NVC's submission included an attached map of the proposed dredge spoils haul route and a map depicting the location of Northport Village Corporation including the Bayside Historic District.

On March 10, 2020, Nordic filed a "Motion to Establish Timetable for a Board of Environmental Protection Decision on Nordic Aquafarm, Inc.'s Applications" pursuant to 38 M.R.S. § 344-B. In its motion, Nordic requested a decision by the Board by May 22, 2020.

Ruling: Title 38 M.R.S. § 344-B establishes timetables for the processing of applications and subsection 3(A)(2) requires the Board to establish a schedule for the proceeding. The following schedule pursuant to section 344-B (3)(A)(2) and Chapter 3, § 4(C)(8), is set forth in light of the hearing transcript becoming available to the parties on Monday, March 9, 2020. While the hearing record remains open for comments on the Department's updated air emissions modeling, DMR's assessment of dredging in the coastal wetland, and the parties' responses to that DMR assessment, the record is now closed as to any other submissions. The schedule below allows sufficient time to finalize briefs following submissions on these two remaining matters. NVC's request for an additional 45 days beyond the deadline for briefs set below cannot be accommodated and, further, is inconsistent with past Department and Board practice for municipal and other governmental entities. NVC has ample time within the schedule below to formulate its final arguments and obtain public input on whether Nordic's proposed project does or does not meet the applicable licensing criteria.

The schedule for the Nordic proceeding going forward is as follows:

- March 16, 2020: Distribution of updated air dispersion modeling conducted by Department staff.
- March 26, 2020: Deadline for the Applicant and Intervenor to comment on the Department's air dispersion modeling.
- Uncertain date: Submittal of DMR's assessment. (The Board has no control over DMR's schedule.)
- Deadline for Nordic's response to DMR's assessment is one week from receipt of DMR's assessment by the Board.
- Deadline for Intervenor's response to DMR's assessment is 10 days after Nordic's response.
- April 9, 2020: Board meeting at which oral argument will be heard on MGL's motions to dismiss Nordic's applications for lack of title, right or interest (TRI) and to conduct an adjudicatory hearing on the issue of TRI.
- April 27, 2020: Deadline for post-hearing briefs (filed simultaneously by Nordic and the Intervenor).
- May 7, 2020: Board deliberative session.

- Period for staff drafting of proposed Board Orders. (The Board has no control over Department staff schedules.)
- Staff's proposed Board Orders made available for 30-day public comment period as required by Department statutes and the federal Clean Water Act.
- Staff review of comments received, possible revisions to proposed Board Orders.
- Board deliberation and vote on proposed Board Orders at a meeting of the Board.

DONE AND DATED AT AUGUSTA, MAINE THIS 16th DAY OF MARCH, 2020.

BOARD OF ENVIRONMENTAL PROTECTION



BY: _____
Robert S. Duchesne, Presiding Officer