



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) FOURTEENTH 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. The Thirteenth Procedural Order addressed certain post-hearing matters and established a schedule for post-hearing submissions and the procedural steps remaining prior to decision on Nordic's applications. This procedural order responds to a motion to modify the schedule for the proceeding and to reopen the record on certain issues.

1. Motion for Continuance of Proceedings

On March 31, 2020, Kim Ervin Tucker, counsel for Intervenor Jeffrey R. Mabee, Judith B. Grace, and Lobstering Representatives (MGL) requested suspension of the calendar in the Nordic proceeding in light of the COVID-19 public health emergency and for personal health reasons. In particular, MGL requested that the oral argument on MGL's February 14, 2020 and February 18, 2020 motions to dismiss Nordic's applications for lack of title, right or interest (TRI) or to hold an adjudicatory hearing on the issue of TRI, scheduled to occur by a teleconference Board meeting on April 9, 2020, be postponed until May.

Joanna Tourangeau, counsel for Nordic, responded to the request for continuance by email on April 1, 2020. In its response, Nordic stated that it would waive oral argument on the motions and would consent to the motions being decided by the Board on the written submissions.

Ms. Tucker responded to Nordic by email on April 1, 2020 stating that MGL did not waive oral argument on the issue of TRI and, if the oral argument was not postponed, she would participate on April 9th regardless of her health.

Intervenor Lawrence Reichard supported MGL's request for a continuance in an email dated April 1, 2020.

Ruling: In response to MGL's request and in consideration of Ms. Tucker's health issues, the Board meeting by teleconference to hear oral argument on MGL's TRI motions is re-scheduled for Thursday, April 16, 2020. The Board recognizes that the COVID-19 public health emergency presents a number of challenges to continuation of government proceedings; however, the Board has a statutory responsibility to conduct business, which includes the processing of applications, to the extent possible. While the Board is sensitive to individual health emergencies, the Board urges all parties to identify persons who can represent their interests in this proceeding in the event they are not able to participate due to illness or other personal responsibilities. With the postponement of this argument, parties have the opportunity to make backup plans in case their counsel is not available to argue. If the moving party (MGL) or the respondent (Nordic) is unable to have a representative for oral argument on the re-scheduled date of April 16th, the Board will decide the motions on the papers with the assistance of its counsel and staff.

2. Renewed Motions and Post-Hearing Comments on Nordic's Applications

In her March 31, 2020 request for continuance of the proceeding, Ms. Tucker renewed MGL's March 3, 2020 and March 10, 2020 motions that the Board reopen its record to receive additional evidence and testimony regarding Nordic's proposal for dredging in the coastal wetland including the management of dredge spoils, that the Board require additional sediment testing for the proposed pipeline route and dredge spoils haul route in accordance with the methodology set forth in the Penobscot River Mercury Study, and that the Board require the applicant to submit amended applications or dismiss the applications.

Ruling: MGL's March 3 and March 10 requests to reopen the record, hold additional proceedings, require new applications, or dismiss the applications for the reasons set forth in those filings have been previously considered and denied. The rulings on these motions remain as stated in the Thirteenth Procedural Order. Parties are asked to refrain from renewing motions previously decided absent a material change in circumstances. The Board is awaiting the Department of Marine Resources' assessment of Nordic's proposed dredging, and parties will have an opportunity to comment on that assessment.

Additionally, parties are directed to refrain from arguing their respective cases on the merits of the proposed project in emails. Final argument on the merits of Nordic's applications and whether Nordic's proposed project does or does not meet the relevant licensing criteria may be made in post hearing briefs. Parties are also reminded that all filings, including emails to Board and Department staff, are public documents and should be professional in tone and content. Filings that are not respectful and professional in tone and content may be stricken from the record.

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

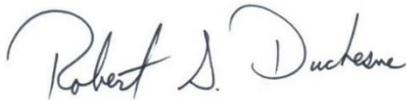
The schedule for the Nordic proceeding going forward is as follows:

- Submittal of DMR's assessment. Date uncertain. (The Board has no control over DMR's schedule.)
- Deadline for Nordic's response to DMR's assessment is one week from the Board's receipt of DMR's assessment.
- Deadline for Intervenor's response to DMR's assessment is 10 days after filing of Nordic's response.
- April 16, 2020. Board meeting by teleconference at which oral argument will be heard on MGL's motions to dismiss Nordic's applications for lack of title, right or interest (TRI) or to conduct an adjudicatory hearing on the issue of TRI.
- April 27, 2020. Tentative deadline for post-hearing briefs (filed simultaneously by Nordic and the Intervenor).
- May 7, 2020. Tentative date for 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.

The deadline for post-hearing briefs and the date for the Board deliberative session may be adjusted as circumstances warrant.

DONE AND DATED AT AUGUSTA, MAINE THIS 3rd DAY OF APRIL, 2020.

BOARD OF ENVIRONMENTAL PROTECTION



BY: _____
Robert S. Duchesne, Presiding Officer