



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) ELEVENTH 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 applications for an Atlantic salmon land-based aquaculture facility proposed to be located in Belfast and Northport. This procedural order documents decisions made at the hearing and the matters for which the record was held open at the close of the hearing for additional information.

1. Request for Intervenor Status

By electronic mail on the afternoon of February 10, 2020, the Friends of Harriet L. Hartley Conservation Area (Friends) filed a motion to intervene in the proceeding. As grounds for intervention, Friends stated that it is the holder of a conservation easement on the intertidal land through which Nordic's proposed pipelines would be constructed, the ownership of which is in dispute. Nordic objected to the motion, noting among other issues that Friends alleged that it had been a holder of the conservation easement over the property in question since early November 2019 but had failed to move for intervention for over three months. Intervenor Lawrence Reichard expressed support for the Friends motion to intervene. Because Friends failed to show good cause to grant its late motion to intervene, the motion was denied at the beginning of the hearing.

2. Additional Time for Cross-Examination of Witnesses

By letter dated February 7, 2020, intervenors Eleanor Daniels and Donna Broderick submitted a letter to the Board regarding their participation in the hearing. Although Ms.

Daniels and Ms. Broderick had not filed any testimony and had not previously requested time for cross-examination of any witnesses, they reaffirmed their standing as intervenors and requested time at the hearing to question the witnesses of the other parties. The other parties did not object to the request. At the hearing, Ms. Daniels was permitted to cross-examine those testifying as time permitted.

3. Additional Witness

Wayne Canning, the Zone D District 11 representative to the Lobster Management Policy Council, who was granted intervenor status by the Board on August 15, 2019 along with David Black and the Maine Lobstering Union, did not pre-file testimony by the deadline established in the Fourth Procedural Order. In response to comments filed by Denis-Marc Nault of the Maine Department of Marine Resources on January 30, 2020, however, Ms. Kim Ervin Tucker submitted a statement by Mr. Canning as Exhibit A to her February 3, 2020 submittal to the Board. No party objected, and Mr. Canning was allowed to present sworn testimony at the hearing on potential impacts to coastal wetlands including fisheries as part of the testimony presented by intervenors Mabee, Grace, and Lobstering Representatives (MGL).

4. Witnesses and Testimony Withdrawn

At the hearing, intervenor Upstream Watch notified the Board that its witness Dr. Brian Dixon was unable to attend the hearing and that its witness Frederick Johnson (GEI) was unable to attend the portion of the hearing relating to blasting and odor. In accordance with provisions of Chapter 3, § 19(B) of the Department's *Rules Governing the Conduct of Licensing Hearings* and the Second and Third Procedural Orders, witnesses were required to be present at the hearing for cross-examination. Accordingly, the testimony of Dr. Dixon and attached exhibits Upstream/NVC A-1, B-1, C-1, E-1, F-1, and G-1 were stricken from the record.

With respect to the testimony of Frederick Johnson, the report titled "GEI Water Supply and Dam Elevation," December 2019 (GEI NVC/Upstream 2) was part of the record as Mr. Johnson had appeared in person to testify on February 11, 2020 about water usage. Therefore, with the agreement of Nordic, only the following statement in Mr. Johnson's pre-filed testimony related to blasting and odor was stricken from the record: Testimony at page 5, third full paragraph, beginning "The Nordic development will disrupt..." and ending "...assess potential impacts to the dams during the planning process."

Additionally, prior to the hearing, Nordic notified the Board that witness William R. Keleher, who had submitted rebuttal testimony jointly with Nordic witness Peter L. Merrill, would not be able to attend the hearing. On February 7, 2020, Nordic resubmitted the testimony affirmed by Peter L. Merrill with no additional changes. Paper copies of the resubmitted testimony were provided at the hearing.

5. Exhibits Offered at Hearing

In accordance with section 1(A) of the Ninth Procedural Order and in response to exhibits submitted by MGL witness Paul Bernacki, Nordic submitted the following exhibits during the hearing which were accepted into the record:

- Nordic Exhibit 38: Memorandum from Edward Cotter, dated February 10, 2020, “Coastal Conditions Summary” and
- Nordic Exhibit 39 consisting of two maps from the Penobscot River Mercury Study and one map from the Maine Department of Marine Resources depicting closure areas in 2014 and 2016.

Nordic also offered Nordic Exhibit 41 consisting of a “Sworn Statement of James Dorsky” and a “Sworn Statement of William B. Gartley” in response to Mr. Bernacki’s rebuttal testimony. These statements, which pertain to the issue of Title, Right, or Interest (TRI), were not accepted because TRI was not a hearing issue. At the hearing, it was noted that these documents may be submitted as written comment by the February 18, 2020 deadline.

6. Post Hearing Submissions

At the close of the hearing, the record was left open for the submissions listed below.

- A. Air modeling. At the request of Department staff, the record remains open to allow staff to complete further dispersion modeling to estimate ambient air concentrations from Nordic’s proposed project based on additional information submitted at the hearing. The parties will have an opportunity to comment on the Department’s modeling. The deadline for comment will be set at a future time.
- B. Analysis by DEP staff member Dr. John Hopeck. As set forth in the Ninth Procedural Order, the parties may comment on Dr. Hopeck’s memorandum of January 27, 2020 pertaining to groundwater. Nordic stated that it would submit comments by Tuesday, February 18, 2020. The deadline for intervenors to respond is Tuesday, February 25, 2020.
- C. Coastal Wetland Boring Logs. Board members requested copies of Nordic’s boring logs for samples taken in the coastal wetland. Nordic stated that it would provide the boring logs by Tuesday, February 18, 2020.
- D. Review by Department of Marine Resources (DMR).
 - (1) Pathogens. DMR submitted a memorandum dated February 5, 2020 from David Russell and Marcy Nelson to Gregg Wood, entitled “Preliminary Review of Nordic Aquafarms’ discharge as it pertains to pathogens.” At the hearing, Nordic stated that it does not intend to comment on this memorandum. In accordance with the Tenth Procedural Order, intervenors requested an opportunity to submit comments on the

memorandum. The deadline for the intervenors to comment is Friday, February 21, 2020.

- (2) Dredging. On February 14, 2020, DMR published notice that it will hold a hearing on March 2, 2020 related to Nordic's Natural Resources Protection Act application. Nordic's response to DMR's assessment will be due one week after the issuance of DMR's assessment. The deadline for comment by the intervenors is ten days after submission of Nordic's response.

DONE AND DATED AT AUGUSTA, MAINE THIS 19th DAY OF FEBRUARY, 2020.

BOARD OF ENVIRONMENTAL PROTECTION



BY: _____
Robert S. Duchesne, Presiding Officer