



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 LICENSES
L-28319-26-A-N)
L-28319-TG-B-N)
L-28319-4E-C-N) THIRD PROCEDURAL ORDER
L-28319-L6-D-N)
L-28319-TW-E-N)
W-009200-6F-A-N)

On October 17, 2019, Board staff held the second pre-hearing conference with the participants in this proceeding to discuss, among other things, the preliminary list of issues that the intervenors requested be the subject of testimony at the Board’s hearing on Nordic’s applications for a land-based aquaculture facility. At the pre-hearing conference the intervenors were asked to submit a second list of requested hearing topics with the three or four most important issues from their various perspectives for the Presiding Officer’s consideration. This procedural order sets forth the Presiding Officer’s ruling on the issues to be addressed at the hearing.

1. Hearing Issues

A. Lists Submitted by Intervenors. Following discussion of the preliminary lists submitted by the parties and the relevance of the listed topics to the licensing criteria, parties were asked to submit refined lists by October 24, 2019¹. Parties were also asked to state on their second lists whether they intend to present testimony on any of the relevant licensing criteria.

Each of the intervenors submitted a list of issues for the Presiding Officer’s consideration. Northport Village Corporation (NVC) initially submitted a list by letter dated October 24, 2019 on behalf of NVC and Intervenor Upstream Watch. By letter dated October 25, 2019, David Losee, on behalf of NVC and Upstream Watch, submitted a revised list of issues for consideration. In this submission, Mr. Losee stated that Upstream Watch and NVC have agreed to work together to consolidate their testimony and requests of the Board.

¹ The deadline was later changed to Friday, October 25, 2019.

- B. Relevant Licensing Criteria. A list of the licensing criteria relevant to the Site Location of Development Act/Natural Resources Protection Act application, the Air emissions application, and the Maine Pollutant Discharge Elimination System (MEPDES)/Waste Discharge License application was attached to the Second Procedural Order and is attached again to this Order. Participants are reminded that hearing testimony should focus on whether Nordic's proposed facility would comply with the licensing criteria that are the subjects of the hearing. Evidence that may be of interest to the parties or the public but that is not relevant to the licensing criteria cannot be considered by the Board in its review of Nordic's applications.
- C. Issues to be Addressed at the Hearing. While the applicant has the burden of proof to affirmatively demonstrate that all the relevant licensing criteria are met, the Board has authority to limit the issues to be addressed at the hearing. Such a narrowing of issues allows 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 assist the Board in evaluating the evidence. With regard to the non-hearing issues, the applications will be judged on written submissions in the form of the applications, any supplemental submissions filed by the applicant, written comments or evidence submitted by the parties or the general public, and comments filed by sister State agencies.

After considering the requests of the intervenors and following consultation with Department staff, the hearing will focus on the following aspects of Nordic's applications:

Site Location of Development / Natural Resources Protection Act Applications.

For context, the applicant is asked to provide an overview of the proposed project at the start of its testimony. Testimony will then focus on the following issues pertaining to the proposed project:

- Financial Capacity;
- Water Usage: groundwater and surface water withdrawals including potential impacts to existing uses such as nearby wells;
- Impacts to streams and associated freshwater wetlands; alternatives analysis (avoidance, minimization, compensation);
- Stormwater Management and upland Erosion and Sedimentation Control, both during construction and post development;
- Impacts to existing uses from construction and operations, including blasting and odor;
- Coastal Wetland Impacts: staging, erosion and sedimentation control during construction, potential impacts to water quality and protected natural resources including concerns about HoltaChem mercury, alternatives analysis.

Maine Pollutant Discharge Elimination System / Waste Discharge License Application.

The applicant is asked to provide an overview of the proposed water/wastewater treatment facility at the start of its testimony including nature of influent, treatment process, and nature of effluent. Testimony will focus on the following issues:

- Composition and characteristics of the effluent;
- Modeling of the discharge as submitted with the application; and
- Impact of the discharge on the water quality of the Bay (Class SB) including potential impacts to fisheries, other marine resources, and other uses.

Depending upon the applicant's response to Department staff's information request, topics may be added to the issues to be addressed at the hearing.

- D. Title, Right or Interest. Consolidated intervenors Jeffrey Mabee and Judith Grace and Maine Lobstering Union and intervenor Eleanor Daniels and Donna Broderick requested that one of the hearing issues be whether Nordic has demonstrated sufficient title, right or interest (TRI) to pursue permits for the proposed project. The Board is aware of the dispute over ownership of the intertidal lands where portions of Nordic's proposed pipelines would be located, and that ownership of this land is currently being litigated. The Board will not hear testimony on this issue at the hearing. The issue is better suited to written evidence and argument than to live testimony and cross-examination. The parties may submit written evidence and argument on the issue but are asked to refrain from re-submitting evidence that is already in the record.

2. Pre-Filed Testimony / Availability of Witnesses

- A. Requirement to Pre-File Testimony. As stated in the Second Procedural Order, all parties are required to pre-file in writing the testimony of their witnesses. The requirement of pre-filed testimony allows Board members, staff, Board counsel, and the other parties to review the testimony in advance of the hearing and come to the hearing prepared to conduct efficient and focused cross-examination. Written testimony must be sworn; the witness must affirm that the testimony is true to the best of the witness' knowledge and belief. A subsequent procedural order will provide more detailed information on requirements for testimony and exhibits and specify deadlines for the filing of testimony.
- B. Availability of Witnesses. All witnesses submitting written, pre-filed testimony must be present in person at the hearing for cross-examination. If a witness does not appear at the hearing, the witness' pre-filed testimony will not be considered sworn testimony. Upon request it may be allowed in the record as an unsworn comment that was not subject to cross-examination. Parties are reminded that no person will be allowed to testify at the hearing for a party unless the person has pre-filed its testimony.

Any appeal from this ruling to the full Board must be filed with the Presiding Officer and copied to the Service list by Tuesday, November 5, 2019 at 1:00 pm. Any such appeal will be heard by the Board at its November 7, 2019 meeting.

DONE AND DATED AT AUGUSTA, MAINE THIS 1ST DAY OF NOVEMBER, 2019.

BOARD OF ENVIRONMENTAL PROTECTION



BY: _____
Robert S. Duchesne, Presiding Officer

Nordic Aquafarms Applications for Land-Based Aquaculture Facility

The Department of Environmental Protection's relevant statutory and regulatory criteria for review of Nordic's applications include:

- Natural Resources Protection Act, 38 M.R.S. §§ 480-A through 480-JJ;
- Site Location of Development Law, 38 M.R.S. §§ 481 through 489-E;
- Pollution Control Law, 38 M.R.S. §§ 411 through 424-B;
- Water Classification Program, 38 M.R.S. §§ 464 through 470;
- Protection and Improvement of Air, 38 M.R.S. §§ 581 through 610-D; and
- Department regulations adopted pursuant to the above laws, including the following Chapters
 - Chapter 115: Major and Minor Source Air Emission License Regulations
 - Chapter 310: Wetlands and Waterbodies Protection
 - Chapter 315: Assessing and Mitigating Impacts to Existing Scenic and Aesthetic Uses
 - Chapter 335: Significant Wildlife Habitat
 - Chapter 371: Definitions of Terms Used in Site Location of Development Law and Regulations
 - Chapter 372: Policies and Procedures under Site Location Law
 - Chapter 373: Financial Capacity Standard of Site Location Law
 - Chapter 375: No Adverse Environmental Effect Standard of Site Location Law
 - Chapter 376: Soil Types Standard of Site Location Law
 - Chapter 500: Stormwater Management
 - Chapter 520: Definitions for the Waste Discharge Permitting Program
 - Chapter 521: Applications for Waste Discharge Licenses
 - Chapter 522: Application Processing Procedures for Waste Discharge Licenses
 - Chapter 523: Waste Discharge License Conditions
 - Chapter 524: Criteria and Standards for Waste Discharge Licenses
 - Chapter 525: Effluent Guidelines and Standards
 - Chapter 579: Classification Attainment Evaluation Using Biological Criteria for Rivers and Streams
 - Chapter 581: Regulations Relating to Water Quality Evaluations
 - Chapter 587: Instream Flows and Lake and Pond Water Levels

Links to the Department's rules can be found on the Department's webpage, and the Secretary of State's webpage at <https://maine.gov/sos/cec/rules/06/chaps06.htm>.