

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTIONJANET T. MILLS
GOVERNOR

Mark C. Draper, Chair

Cynthia S. Bertocci
Executive AnalystRuth Ann Burke
Board Clerk

MEMORANDUM

To: Board of Environmental Protection
From: Cynthia Bertocci, Executive Analyst
Date: May 20, 2020 Board Meeting
Re: Nordic Aquafarms, Inc.- Deliberative Session
Chapter 115 Minor Source Air Emissions application -A-N,
Site Location of Development Act and Natural Resources Protection Act Applications, and
Maine Pollutant Discharge Elimination System / Waste Discharge License application

Background

On June 13, 2019, the Department accepted Nordic's applications to construct and operate a land-based Atlantic salmon aquaculture facility in Belfast and Northport as complete for processing pursuant to Chapter 2, § 11(B) of the Department's rules. The Board assumed licensing jurisdiction over Nordic's applications on June 20, 2019 and held a hearing on the applications in Belfast on February 11 through February 14, 2020.

At the close of the public hearing, the record was held open to receive the following information:

- Additional air emissions modeling by Department staff and the parties' comments thereon;
- Comments on DEP staff member Dr. John Hopeck's memorandum dated January 27, 2020 pertaining to groundwater;
- Coastal wetland boring logs taken by Nordic's consultant;
- Comment on DMR's 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;" and
- DMR's Assessment of the impacts of Nordic's proposed dredging in the coastal wetland, dated April 7, 2020, and comments on that Assessment.

These documents have been provided to the Board.

Additionally, the following participants provided post-hearing briefs which have been provided to Board members: Nordic Aquafarms, Upstream Watch, Northport Village Corporation, and The Fish Are Okay. Intervenors Jeffrey R. Mabee, Judith B. Grace, and Lobstering Representatives (MGL) provided a statement in lieu of a brief. Nordic and Upstream Watch also filed Proposed Findings of Fact for the Board's consideration.

Deliberative Session

This deliberative session is an opportunity for Board members to discuss the record and the relevant licensing criteria with one another and Department staff. Because the record is closed, the Board does not receive further comment from the parties or the general public. In addition to discussing the evidence in the record, Board members may provide some direction to staff regarding the staff's examination of the record and certain aspects of the formulation of a draft license decision. No final votes are taken at this deliberative session. Further deliberation and a vote may occur when the Board has before it a staff recommendation in the form of a draft license decision.

Board participation in the deliberative session is limited by 38 M.R.S. § 341-C(8). Accordingly, Board Chair Mark Draper is not participating in review of Nordic's Air Emissions and Waste Discharge applications, and Board member Susan Lessard is not participating in review of the Waste Discharge application. In addition to being recused from review of Nordic's Air Emissions and Waste Discharge applications pursuant to 38 M.R.S. § 341-C(8), Board member Mark Dubois is not participating in the proceeding because he was not able to attend the public hearing.

Organization of the Deliberative Session

As with the hearing, the deliberative session is organized by application type: in this case Air, followed by Site Law and Natural Resources Protection Act (NRPA), and then Waste Discharge. To assist discussion, Department staff members have prepared the following briefing memos, which have been provided to the Board in the packet:

- Air: Memorandum from Jeff Crawford, May 12, 2020
- Site Law and NRPA: Memoranda from Bureau of Land Resources, May 13, 2020
 - Introductory Memorandum
 - Proposed Groundwater and Surface Water Usage
 - Proposed Impacts to Natural Resources
 - Proposed Seawater Access System (Pipelines)
- Waste Discharge: Memorandum from Gregg Wood, Kevin Martin, and Commissioner Reid, May 13, 2020.

These memos focus on some of the major issues in dispute and will be the starting point for deliberations. However, Board members may ask questions of staff and comment on any of the licensing criteria and issues, some of which the parties have highlighted in their post-hearing briefs. While the Board may touch on the issue of Title, Right or Interest, I do not anticipate spending a significant amount of time on this issue as the Board devoted its April 16, 2020 meeting to hearing oral argument on and considering the issue of TRI.

Additionally, Board members should note that the parties' responses to DMR's Assessment of dredging in the coastal wetland include commentary on DMR's hearing process. The Presiding Officer ruled in the Fifteen Procedural Order that comment on DMR's process will be disregarded by the Board and, therefore, will not be discussed at the deliberative session:

Comments on DMR's process are not comments on the substance of DMR's April 7, 2020 Assessment for which the Board's hearing record was held open. Further, the

Board will not direct DMR or judge the process it undertook before providing its Assessment. While many of intervenors' objections to DMR's process are woven into the comments filed by the intervenors and cannot be readily redacted, the Board will disregard them in its assessment of Nordic's applications.

Conduct of the Deliberative Session

As noted above, the deliberative session will be organized by application type. I will lead the Board through a discussion of the issues for each application. Department staff will be available to respond to Board members' questions regarding the relevant licensing criteria, the evidence in the record, staff analysis of that evidence as summarized in their briefing memos, and any other licensing issues that the Board wishes to discuss.

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