

EXHIBIT

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From: **Kavanah, Brian W** Brian.W.Kavanah@maine.gov
Subject: Request for TRI information
Date: January 23, 2019 at 10:16 AM
To: JTourangeau@dwmlaw.com
Cc: Martin, Kevin Kevin.Martin@maine.gov, Wood, Gregg Gregg.Wood@maine.gov, Loyzim, Melanie Melanie.Loyzim@maine.gov, Boak, Scott Scott.Boak@maine.gov, DiBello, Carol Carol.DiBello@maine.gov



Hello Joanna,

As we discussed yesterday during our phone call, attached is the letter requesting additional information regarding TRI and potential BEP jurisdiction issues. A hard copy of this letter will also be mailed today.

Sincerely,

Brian Kavanah
Acting Co-Director, Bureau of Water Quality
Director, Division of Water Quality Management
Maine Department of Environmental Protection
Station 17, Augusta, ME 04333
(207) 287-7700 (desk) / (207) 530-0293 (cell)



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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JANET T. MILLS
GOVERNOR



MELANIE LOYZIM
ACTING COMMISSIONER

January 22, 2019

Joanna B. Tourneau
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101-2480

RE: Nordic Aquafarms, Inc's Application for MEPDES Permit #ME0002771

Ms. Tourneau:

In light of recently received evidence that the Department has determined to be credible, the Department is requesting further information regarding 1) the location of the structures associated with the Nordic Aquafarms MEDPES application, including all portions of the outfall pipe from the proposed facility, and 2) the applicant's title, right or interest (TRI) in the area proposed to be developed or used. The Department requests all such information be submitted no later than February 6, 2019.

First, the Department has reviewed submissions from commenters and material submitted to the Bureau of Parks and Lands (BPL) and has determined that there is evidence that at least some portions of the proposed project, including parts of the outfall pipe and the ultimate outfall location, are located within the municipal boundaries of Northport, and are not entirely within Belfast as asserted in the application. Please provide additional information supporting your assertion that all aspects of the proposed development, including the entirety of the outfall pipe from the facility, are located entirely within Belfast, specifically additional information regarding the subtidal and intertidal segments of the project piping. As you are aware, the location of a project is relevant to notice requirements and the Department's recommendation with respect to the Board of Environmental Protection's assumption of jurisdiction. The Department plans to reconsider its December 21, 2018 jurisdictional recommendation based on the evidence it has received since that initial determination, as well as any further evidence submitted by the applicant in response to this Department request.

Second, the Department has also received numerous submissions challenging the applicant's TRI for aspects of the project based on the contents of the application. When credible evidence is submitted disputing TRI, the Department may, as it is now doing here, request additional evidence from the applicant to confirm that the applicant

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

website: www.maine.gov/dep

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

has met its burden regarding that TRI threshold demonstration. The Department therefore seeks the following information to clarify whether the applicant has sufficient TRI with respect to all areas proposed for development or use for the project:

- 1) A clarification from the parties to the Eckrote purchase and sale agreement that the easement contained in that agreement expressly includes intertidal rights and applies to the adjoining intertidal zone. This Department request, which echoes a similar request recently made by BPL, may be satisfied through an amendment, modification, or clarification to the agreement (or its attached Exhibit A) by the parties to that agreement.
- 2) The survey providing the basis for the Eckrotes' intertidal property boundaries.
- 3) A detailed demarcation of the proposed project pipe location relative to the Eckrote's property boundaries and other intertidal boundaries of adjacent property owners.
- 4) Evidence that an application has been submitted to the Belfast Public Works Director, which may either be actively pending or being held in abeyance, for the proposed area required for the burying of project piping crossing under Route 1; or a demonstration that the fee title to that underlying land is owned by the applicant or encompassed by the Eckrote easement and option agreements.

Please provide all information requested above as soon as possible, but not later than February 6, 2019. This additional information will assist the Department with its forthcoming reconsideration of its December 21, 2018 Board jurisdictional recommendation, and its assessment and findings regarding the sufficiency of the applicant's TRI for various project areas, including the outfall pipe and ultimate outfall location. Please note that the Department has discretion to return the application should it determine, at any time, that the applicant lacks sufficient TRI for any project areas. Thank you for your attention to this matter.

Sincerely,



Brian Kavanah
Acting Co-Director, Bureau of Water Quality
Director, Division of Water Quality Management

Cc: Carol DiBello - SLP, DACF