



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) TENTH PROCEDURAL ORDER
L-28319-L6-D-N)
L-28319-TW-E-N)
W-009200-6F-A-N)

This procedural order documents rulings on several matters that have recently come before the Presiding Officer for decision in the matter of Nordic Aquafarm, Inc.’s applications for an Atlantic salmon land-based aquaculture facility proposed to be located in Belfast and Northport.

1. Written Comments on Hearing Issues Filed by Party Witnesses

The deadlines for the prefiling of written direct and rebuttal testimony were December 13, 2019 and January 17, 2020, respectively. Mr. Bernacki filed rebuttal testimony in a timely manner, as a witness for Mabee/Grace and the Lobstering Representatives (MGL). After he filed his rebuttal testimony, and after the filing deadline for testimony, Mr. Bernacki filed several additional submittals.

On January 21, 2020, Assistant Attorney General Laura Jensen wrote to the parties in this proceeding clarifying that witnesses for the parties may not submit written comments on hearing topics. The purpose of this rule is to ensure fairness for all parties and to allow cross-examination and questions from the Board and staff on witnesses’ testimony. The deadlines for testimony to be filed allow the other parties to read and file rebuttal testimony or, in the case of rebuttal testimony, to read and prepare cross-examination questions for the hearing. Subsequent to Ms. Jensen’s letter clarifying that witnesses may not file comments beyond their testimony, Mr. Bernacki sent several e-mails to the Department on hearing topics. These e-mails include the following:

- E-mail dated January 22, 2020 with a commentary on Normandeau’s wetland characterization with attached Appendix B from the application.

- E-mail dated January 24, 2020 attaching Ms. Ervin Tucker’s comments to the Department of Marine Resources with a sampling map.
- E-mail dated February 3, 2020 entitled “Intervenor Exhibits NAF submitted documents Paul Bernacki 6 plans Nordic has submitted.” This e-mail had five attachments, described as:
 1. CS101 315.19 pipe plan and Profile
 2. location of sediment samp. (Fig. 18.1)
 3. construction PI Ransom apenx [sic] A
 4. Ransom Pipe Rutes [sic] Considered 31519
 5. CS104 erosion control plan 5319
- E-mail dated February 3, 2020 entitled “additional plan exhibits.” This e-mail had three attachments:
 1. construction PI Ransom apenx [sic] A (same as #3 above)
 2. Supp. Ex. A 0231714.00 – Option 2
 3. Ronson Survey (Boundary Survey of Phyllis J. Poor Estate by Good Deeds, August 31, 2012)
- E-mail to Kevin Martin and Nick Livesay, dated February 2, 2020, entitled “Correction. Previous e-mail square footage calculations, dropped a zero!” (regarding subtidal impact).
- E-mail to Nick Livesay, Kevin Martin, Ethan Andrews, editor@villagesoup.com; Block, dated February 2, 2020, entitled: “DMR report Denis-Marc Nault, impact/dimension misinformed as to applicants [sic] construction plans/narrative” (described as Mr. Bernacki’s “citizen response/professional critique” of intake and outfall pipeline and Mr. Nault’s comments).
- E-mail to Kevin Martin, Nick Livesay, Stephen Dickson, Kim Ervin Tucker, dated February 1, 2020, entitled Comment for “the Record, Nordic Aquafarms Inc NRPA permit applications attachments; United States Navy – Navy geotechnical testing procedures ... “ (Also attaching “Notes for Handbook for Marine Geotechnical Engineering, and Brothers sediment depth).
- E-mail dated February 7, 2020, entitled “Public, hearing, testimony, evidence...” discussing proposed grading and filling.

The submission of these comments and their attachments into the record directly contravenes the instructions sent to the parties in Assistant Attorney General Laura Jensen’s e-mail which clarified that witnesses are not permitted to submit written comments into the record on hearing topics after submission of their testimony. To allow submission of such comments would deprive the other parties of due process. Therefore, the eight e-mails listed above and their attachments are stricken from the Administrative Record.

2. State Agency Review Comments

On January 30, 2020 the Department of Marine Resources submitted comments on Nordic's proposed project as currently configured. Additionally, a second memorandum of analysis by DEP staff member John Hopeck pertaining to groundwater was entered into the record on January 27, 2020. On February 5, 2020 the Department of Marine Resources submitted an additional document "Preliminary Review of Nordic Aquaculture's discharge as it pertains to pathogens" to Gregg Wood (Maine DEP) as part of its review of Nordic's applications.

These comments will be posted on the Department's website and have been provided electronically to the parties.

Given that these comments became available for review shortly before the start of the hearing, the parties will be permitted to address them orally at the hearing. If further time is required to review and comment, the parties may request additional time to submit written comments following close of the hearing.

3. Site Visit by Board Members

Board members Robert Sanford and Steven Pelletier, who did not attend the Board's October 24, 2019 site visit, would like to view the proposed development site with staff on Monday, February 10, 2020. During the Presiding Officer's conference call with the parties on February 6, 2020, the following parties stated that they would waive their right to attend such a site visit; some stated they would waive it only provided all other parties waived the right to attend: Joanna Tourangeau for Nordic, Kristin Racine for Upstream/Northport Village Corporation, Lawrence Reichard, Charles Tilburg for University of New England, Donald Perkins for Gulf of Maine Research Institute, and George Flimlin and Diane Hunt Braybrook for The Fish Are Okay.

In a follow-up conversation with Ms. Bensinger on February 7, 2020, Ms. Tucker, on behalf of Intervenor Mabee, Grace, and Lobstering Representatives, waived her clients' right to attend the site visit. In a conversation with Ms. Bertocci on February 7, 2020, Ms. Daniels similarly waived the right to attend the requested site visit. By electronic mail on February 7, 2020, Ms. Tourangeau notified the Board that Nordic has notified project property owners with whom Nordic executed land contracts containing notice provisions of the proposed site visit.


In an e-mail on February 7th, Ms. Tucker confirmed the waiver and stated that her clients, Mr. Mabee and Ms. Grace, and The Friends of Harriett L. Hartley Conservation Area, who also claim ownership interests in land proposed for use by the proposed project, consent to the site visit. Ms. Tucker requested that the two Board members doing the site visit be briefed concerning the TRI issues and arguments made by the parties. She also requested that a list of documents concerning TRI be provided to the two Board members before the site visit. Board member Sanford has been on the Board since June 27, 2019 and has received the filings that other Board members have received. New Board member Mr. Pelletier has not

received those filings, but he will be generally briefed on the issue by staff and counsel prior to the site visit so that he can see the different lots and areas at issue. Because TRI is not an issue to be addressed at the upcoming hearing and due to time constraints, Mr. Pelletier will be provided the materials that the other Board members have previously received after the hearing.

Any appeal from this ruling on the admissibility of evidence must be filed by Monday, February 10, 2020 at noon and will be considered by the Board prior to the start of the hearing.

DONE AND DATED AT AUGUSTA, MAINE THIS 7TH DAY OF FEBRUARY, 2020.

BOARD OF ENVIRONMENTAL PROTECTION



BY: _____
Robert S. Duchesne, Presiding Officer