



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

April 28, 2023

Via E-mail Only

Ed Cotter
NORDIC AQUAFARMS, INC.
159 High Street
Belfast, ME 04915

Joanna Tourangeau Esq.
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, ME 04101-2480

RE: Nordic Aquafarms, Inc Permit Suspension Proceedings

Dear Mr. Cotter and Ms. Tourangeau,

On November 19, 2020, the Board of Environmental Protection issued to Nordic Aquafarms, Inc. (Nordic) a Site Location of Development Law and Natural Resources Protection Act license, # L-28319-26-A-N / L-28319-26-A-N / L-28319-26-A-N / L-28319-26-A-N / L-28319-26-A-N (Site/NRPA Permit), an Air Emissions license, #A-1146-71-A-N (Air Permit), and a wastewater discharge license/Maine Pollutant Discharge Elimination System Permit # ME0002771/W009200-6F-A-N (MEPDES Permit) (collectively “licenses”). Pursuant to 38 M.R.S. § 342 (11-B) and Chapter 2, §§ 25 and 27 of the Department’s Rules, Upstream Watch (Upstream) submitted a petition on March 9, 2023, to suspend or revoke the licenses issued to Nordic, and Jeffrey Mabee, Judith Grace, and The Friends of Harriet L. Hartley Conservation Area (Mabee/Grace/Friends) submitted a petition to revoke the licenses on April 10, 2023.

These petitions are based primarily on the February 16, 2023, decision of the Maine Supreme Court, sitting as the Law Court, in *Jeffrey R. Mabee et al. v. Nordic Aquafarms Inc. et al.*, 2023 ME 15, a quiet title action, which held that a deed conveying land under which Nordic later obtained the right to an easement to cross with intake and discharge pipes did not include the intertidal land with the upland. The Department is aware that, prior to the Law Court’s decision in the quiet title action, the City of Belfast took by eminent domain the upland and the property interests adjudicated in the quiet title action, including relevant portions of the intertidal utilized by the project and the “Residential Purposes Understanding” affecting adjacent upland. That eminent domain action by the City of Belfast has been appealed and the case is pending in Superior Court (*Mabee, et al. v. City of Belfast, et al.*, WALSC-RE-2021-0007), and per the

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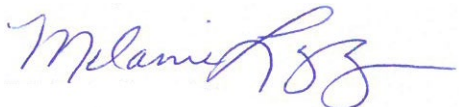
court's order has been reinitiated following the quiet title action. Following the City of Belfast's eminent domain action, the City subsequently granted permanent and temporary easements to Nordic over that land.

Nordic filed responses to the two petitions on April 7, and April 17, 2023, respectively, in which it agreed to the remedy of a suspension, but requested certain provisions be included in a suspension order.

Pursuant to 38 M.R.S. § 342(11-B) and Chapter 2, § 25(A) of the Department's rules, the Commissioner may revoke or suspend a license upon making certain findings, including a finding that: "There has been a change in condition or circumstance that requires revocation or suspension of a license." 38 M.R.S. § 342(11-B)(E); Ch. 2, § 27(E). I have determined that the Court's quiet title decision, together with the pending litigation over the City of Belfast's eminent domain action, represents a change in circumstance that may warrant a suspension of the licenses. Therefore, I am initiating this proceeding under 38 M.R.S. § 342(11-B)(E); Ch. 2, § 27(E).

Chapter 2, § 25(A) & (C) establish that the Commissioner may not revoke or suspend a license without providing the licensee written notice and opportunity for a hearing pursuant to 5 M.R.S. §§ 9051-9064. This letter shall serve as the required notice that I am initiating proceedings to consider the suspension of the licenses based on the criterion set forth in 38 M.R.S. § 342(11-B) and Chapter 2, § 27(E). The Department acknowledges that Nordic stated that it waived its opportunity for a hearing in its responses to the Upstream and Mabee/Grace/Friends petitions, however, the Department requests that Nordic confirm its waiver of the hearing or request a hearing in response to this notice by May 5, 2023.

Thank you,

A handwritten signature in blue ink, appearing to read "Melanie Loyzim", with a stylized flourish at the end.

Melanie Loyzim, Commissioner