

**STATE OF MAINE**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF

NORDIC AQUAFARMS INC.	)	
	)	
A-1146-71-A-N	)	NORDIC AQUAFARMS INC.
L- 28319-26-A-N	)	RESPONSE TO NORTHPORT
L-28319-TG-B-N	)	VILLAGE CORPORATION
L-28319-4-E-C-N	)	PETITION TO MODIFY THE
L-28319-L6-D-N	)	PERMITS
L-28319-TW-E-N	)	
W-009200-6F-A-N	)	
	)	

NORDIC AQUAFARMS INC. (“Nordic”), licensee in the above captioned matter, responds herein to the Northport Village Corporation April 25, 2023 “formal petition under 06-096 Chapter 2 Section 25(B) Modification of License or Order Prescribing Corrective Action, based upon recent news that they are switching to another type of fish.” April 25, 2023 E-mail of Mr. Michael Lannan, NVC Liaison for Nordic Aquafarms Permitting (“NVC Petition”) at ¶ 2.<sup>1</sup> The NVC Petition is based on Section 27(F) of Chapter 2 of the Department of Environmental Protection’s (“Department”) Rules which provides that the Commissioner may “revoke, suspend, or modify a license or prescribe necessary corrective action only if the Commissioner [...] finds that” “[t]here has been a change in any condition or circumstance that requires a corrective action or a temporary or permanent modification of the terms of the license.” NVC Petition at ¶ 4; 06-096 C.M.R. Ch. 2 § 27 (F). First,

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<sup>1</sup> In late April/early May, Mr. Lannan, purportedly on behalf of NVC, sent the Department many other emails relating to the NVC Petition. Chapter 2 of the Department’s Rules prohibits supplementation of the NVC Petition. 06-096 Ch. 2 § 25 (B). Nordic does not respond herein to that improper correspondence except to note that, if the Department intends to consider those improper filings, Nordic requests notice and an opportunity to respond consistent with Chapter 2.

the NVC Petition is improper because it fails to allege any actual change in any condition or circumstance. Second, even if the NVC Petition accurately alleged changed circumstances, Department initiation of suspension proceedings regarding all of the licenses for the Nordic project in Belfast, Maine, as captioned above, moots substantive changes to the Permits sought by the NVC Petition. Consequently, the Department is without authority pursuant to Chapter 2 of its rules to initiate the proceedings sought by the NVC Petition.

### **BACKGROUND**

Chapter 2 of the Department's Rules implements the Department's statutory authority as an executive branch administrative agency authorized by 38 M.R.S. § 342(11-B) to initiate proceedings, as the Department recently did, to address the current impact of actual changes, such as changes to right, title and interest created by decisions of the Law Court and exercise of eminent domain by the City of Belfast. The NVC Petition alleges no such actual changed circumstances. The only changed circumstances cited in the NVC Petition are unsupported speculation that Nordic's announcement of a change to the species of fish to be raised in its California facility means that Nordic also changed the species of fish raised in the Belfast project and that any such change requires immediate modification to the above captioned permits for Nordic's project in Belfast, Maine ("Permits"). NVC Petition at ¶ 1. In reality, Nordic made no such decision regarding the Belfast project.

Instead, Nordic joined requests for suspension of the Permits. Indeed, the Commissioner recently initiated suspension proceedings for the Permits. These suspension proceedings commenced in advance of Nordic starting construction of the Belfast project or any improvement contemplated by the Permits. Any such suspension of the Permits pending resolution of property claims impacting the Permits moots contemporaneous Department proceedings on substantive changes to the Permits because the Department's suspension proceedings will delineate Nordic's ability to act under the

substantive provisions of the Permits during the suspension period and, in any event, actual operation of the Project such as raising fish of any variety, will occur only after construction, well after any suspension period.

**I. The NVC Petition Does Not Present any Changed Circumstances.**

The “changed circumstances” presented in the NVC Petition are not the sort of concrete changes impacting the Permits which require Department modification of the Permits in the manner requested by the NVC Petition. The NVC Petition states that:

Nordic Aquafarms did not disclose to DEP that they were abandoning salmon production in their facilities worldwide in their permit modification request to suspend and modify their condition timeline dates. Nordic had already abandoned salmon production in Europe, but on Friday, it was announced in fish farming publications, and on Monday in local California papers, that they no longer were proposing to raise salmon in their California project. As a result of this last remaining Nordic salmon farming project other than Belfast changing to another fish, changing their product in Belfast was also announced last week, as well. This statement may appear to be conjecture.....”

NVC Petition at ¶ 1. Nordic’s announcement regarding the California project does not apply to the Belfast project. Nordic did not decide to or announce that it will change the species grown at the Belfast farm. Even if Nordic had made such a decision or announcement, the facility is not built. Thus, any change to the species cannot require immediate modification or corrective action pursuant to the Permits. Indeed, the NVC Petition is devoid of documentation that a change in species by Nordic would “require” modification or corrective action thereby justifying Department action under Chapter 2, Sections 25 and 27. Put simply, Nordic hasn’t made a decision to change the Belfast farm species and even if it had, Nordic has not reviewed how any other species might impact any of the terms of its Permits. As such, the NVC Petition fails to present changed circumstances that require the Department proceedings sought by the NVC Petition.



## **II. Ongoing Commissioner Suspension Proceedings Moot the NVC Petition.**

While the speculation in the NVC Petition is just that- speculation- the Department already initiated suspension proceedings for the Permits because of actual changed circumstances. Specifically, the Commissioner is considering tolling all of the deadlines and timelines in the Permits pending resolution of ongoing property litigation impacting the Permits.<sup>2</sup> During any such suspension period, unless Nordic seeks and obtains advance written authorization from the Department, Nordic does not anticipate commencement of construction of the Project. Consequently, other substantive changes to the Permits, such as to species of fish, are moot.

In other words, the NVC Petition seeks changes to the substantive terms of the Permits to address entirely speculative future changes to operation of the project allowed by the Permits. Considering substantive modifications to Permits currently in suspension proceedings would be a complete waste of the Department's time- even assuming that the alleged changes to the Project are real and not based on conjecture. The suspension period sought may be extensive. After that, the Project construction will need to be completed, which will also require a lengthy period. During that time, it is possible that Nordic may seek changes to the Project (through the appropriate mechanisms set forth in Chapter 2 of the Department's Rules). But, any such future plans would be market dependent and, at this point, entirely speculative as discussed above. Instead, Nordic supported suspension of the Permits-- instead of-- commencement of construction. Put simply, while the Department is considering suspension of the Permits it cannot simultaneously consider unrelated substantive modifications to the project contemplated by the Permits because that would void the purpose of suspension. Department suspension of the Permits will itself prevent Project changes

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<sup>2</sup> NVC corresponded with the Department regarding its desire for Nordic to continue water monitoring required by Nordic's MEPDES permit during any suspension period. While this dialog is not properly before the Department, Nordic clarifies that it does seek to pause all such condition compliance during the suspension period.

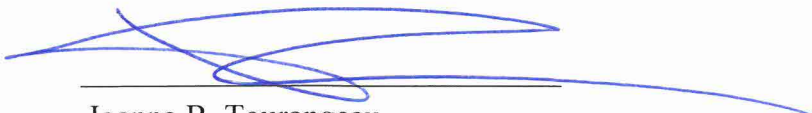
requiring modification of the Permits from proceeding- even if this process were appropriate for the sort of changes NVC speculates Nordic might make to its project- which it is not.

### CONCLUSION

Nordic supported suspension of the Permits and tolling of all associated deadlines, terms and conditions of those Permits. Nordic also “respectfully requested that the Commissioner’s suspension order specify, for the sake of clarity, that the Permits remain transferrable during the suspension period and that the Commissioner may consider whether future circumstances warrant dissolution of the suspension order prior to the Final Ownership Decision Date” (i.e. the date on which all litigation regarding property rights associated with the Permits is finally resolved). The NVC Petition does not present any change of circumstances regarding the Belfast project and, even if it did, such changes would be mooted by any Commissioner suspension order on the unopposed terms sought by the parties thereto.<sup>3</sup>

Dated: May 17, 2023

Respectfully submitted,



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<sup>3</sup> Nordic respectfully requests that the Department consider reducing the service list to reflect the parties to the suspension proceedings plus NVC and any other entities who request inclusion and/or otherwise restrict usage for proper purposes because the service list is currently being improperly used as a circulation platform for internet links to articles written by some addressees.