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August 31, 2020

Hon. Robert S. Duchesne, Presiding Officer
Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04330

File No:

A-14-781-A-N
L-28319-26-A-N
L-28319-TG-B-N
L-28319-4E-C-N
L-28319-L6-D-N
L-28319-TW-E-N-N
W-009200-6F-A-N

RE: MEPDES/WDL and SLODA Application Process and Second Request for a Hearing with Respect to Anti-Degradation Policy Requirements

To the Presiding Officer and Board of Environmental Protection:

On May 20, 2020, BEP held its first and last formal deliberations. During that meeting staff acknowledged there remain missing, incomplete, or insufficient application material for all of the permit applications, but especially the wastewater discharge permit application.

To date, Nordic Aquafarms has provided little to no actual ambient condition data, project specific background studies, actual ocean mixing or flow measurements, or potential influent source data for site and process specific wastewater design parameters. While the record was still open Nordic's mixing calculations showed the project would exceed the threshold for water quality degradation, making it

necessary to hold an anti-degradation hearing on water quality. In response, and in an apparent attempt to avoid that hearing, the DEP revised the calculations with a less conservative threshold assumption. In our June 12, 2020 comments, (see attached) we had a singular focus which was to request for the required hearing based upon the information and testimony in the record. That request was not formally acknowledged or addressed, so we are making that requested again, herein. It is described in more detail in the latter section of this letter.

First, however, the NVC requests that the comment period for this draft wastewater discharge permit be aligned with the other permits to address the overlap with respect to the requirement to determine the potential for adverse impacts to discharge/surface water.

MEPDES/WDL and SLODA Application Process

It is now clear DEP intends to resolve the outstanding concerns and missing application studies and data discussed in the deliberations, by issuing a permit containing conditions that Nordic supply, after the fact, those many items that were required as part of the permitting process, but not supplied by the Applicant. Of course, this is contrary to law.

The impacts from many of these requirements, now deferred to permit conditions, cannot be confirmed, or will not become apparent until many, many years after approval, buildout, and full operations. For multiple Clean Water Act compliance parameters, the ability to determine the actual compliance CAPABILITIES of the facility as proposed (the primary purpose of permitting prior to construction), cannot be determined until the following are completed:

1. The conceptual design of the facility,
2. The local permitting process is complete,
3. The Army Corp of Engineers dredging studies are completed,
4. The final design of the processes as result of the local and federal conditions,
5. The start of the multi-year Phase 1 construction effort,
6. The start-up of Phase 1,
7. The hatching and rearing of Phase 1 fish,
8. The years between Phase 1 and Phase 2 construction described as a period to gather some initial data,
9. The multi-year Phase 2 construction effort,
10. The hatching and rearing of Phase 1 fish, and
11. The full ramping up of the final facility.

The NVC makes no prediction about how long all of the sequential steps above could hypothetically take, or would realistically take, but more than a decade would not be an unreasonable assumption. This time delay between permit approval and the identification of actual impacts for a proposed project of this magnitude, is why it is so important for the facility to provide the proper permitting studies and actual ambient monitoring data up front, before they break ground and destroy the existing ecosystem present, and before they dredge up sediment with known mercury contamination in the Penobscot Bay just outside of our mooring field.

The purpose of the permit application is to gather enough information so that the FINDINGS AND CONCLUSIONS as drafted can be substantiated before natural resources are destroyed. As of today, they simply cannot be credibly substantiated so an order and draft permit is premature.

The typical and natural time delay between permit approval and the possible confirmation of the proposed project, is also why the Site Location of Development/Natural Resources Protection Act (Site/NRPA) process is so important, and why the findings for all four of these permits are interconnected and should be developed and reviewed together.

For this project, little ambient and background information has been provided. Comments on the determinations in the discharge application for the facilities ancillary process cannot be satisfied simply by approving the Best Practical Technologies proposed.

The Site Law process was developed to require an applicant to proactively, not reactively, address several specific areas of concern, one of which is air quality (which is why a similar request to align those draft orders and draft comments for the Chapter 115 permit requirements with the SLODA air impact assessment draft FINDINGS was made previously), and another which is surface water discharge. This is summarized well at the beginning of 06-096 Chapter 375 (Site Law):

In determining whether the developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, or natural resources in the municipality or in neighboring municipalities, the Department has identified several specific areas of concern which are dealt with in detail below.

Surface water discharge is a specific area of concern, and is included in Chapter 375, Item 6:

6. No Unreasonable Adverse Effect on Surface Water Quality

- A. **Preamble.** *The Department recognizes that developments have the potential to cause the pollution of surface waters through both point and non-point sources of pollution.*
- B. **Scope of Review.** *In determining whether the proposed development will have an unreasonable adverse effect on surface water quality, the Department shall consider all relevant evidence to that effect, such as evidence that:
 - (1) **The development or reasonably foreseeable consequences of the development** *[emphasis added] will not discharge any water pollutants which affect the state classification of a surface water body (38 M.R.S.A. Section 363 et seq.).**

Please note that the “development” is a fish farm, not a peak shaving power plant, a dredging and pipe line installation operation, or a wastewater treatment plant. For this Applicant’s proposed development, only after the FINDINGS on the “site suitability” for the development, can one then consider the wastewater discharge permit FINDINGS and CONCLUSIONS.

Please note that in both Procedure Orders 13 and 14, a roadmap for this Applicant's review process after deliberations was laid out in the last four bullets as follows:

- *Period for staff drafting of proposed Board Orders. (The Board has no control over Department staff schedules.)*
- *Staff's proposed Board Orders made available for 30-day public comment period as required by Department statutes and the federal Clean Water Act.*
- *Staff review of comments received, possible revisions to proposed Board Orders.*
- *Board deliberation and vote on proposed Board Orders at a meeting of the Board.*

The NVC assumed from these bullets that the draft Orders would be made available for a single 30-day comment period. Also, it is clear from these bullets that the BEP must wait until the last permit of the four has gone through its review and comment cycle before the Board finalizes the Findings, Orders, and Conditions, so it seems that the proper delay to align and coordinate comments does not have any effect on the ultimate timeline.

At this juncture, because of the unique nature of these draft FINDINGS AND CONCLUSIONS with most of the required permitting data to being collected after start-up, it is imperative that the SLODA (and NRPA) application FINDINGS, especially the part that includes Chapter 375 Item 6(B)(1) above, be drafted and distributed for comments prior to the discharge permit comment period being closed. **Please delay the comment period for this MEPDES/WDL draft FINDING AND CONCLUSIONS to coincide with the SLODA and NRPA FINDINGS AND CONCLUSIONS.**

The NVC made a rightful, and similar, request to align the comment period for the Chapter 115 air permit draft FINDINGS, draft ORDER, and draft CONDITIONS to coincide with the comments on the draft FINDINGS AND CONCLUSIONS ON July 30, 2020. That request was denied in your letter dated August 7, 2020. Those letters are not available electronically as of today on the Nordic Aquafarms section of the DEP website, so they are appended here again for reference and inclusion in the record. **After reviewing these conditional MEPDES/WDL draft FINDINGS AND CONCLUSIONS, the previous request for aligning the air comments deadlines for the Chapter 115 Application to remain open until the SLODA draft air quality FINDINGS was clearly the proper request and is renewed herein again, along with this additional request to align this wastewater permit comment process with the Site Suitability/NRPA draft FINDINGS for surface water discharge under the Site Law.**

It is impossible to comment completely on the wastewater license at this time for this particular proposed project, without reviewing or understanding the draft FINDINGS for Site Suitability and the potential for "unreasonable adverse effects on...water quality". Specifically it is unclear how the post-start up permit data collection program offered in the draft FINDING AND CONCLUSION for the MEDPES/WDL will result in addressing the unknowns required to establish the proper permitting burden of proof for the SLODA draft FINDINGS for surface water discharge.

Second Request for a Hearing with Respect to Anti-Degradation Policy Requirements

In our June 12, 2020 letter to BEP, the NVC requested a hearing per 38 M.R.S. §464(4)(F)(5). We will not go through the rationale for the request for that hearing again, as it is included in the original letter appended herein as well. This letter is submitted with respect to the changes in assumptions for the far-field calculations as part of the opportunity raised in the Seventeenth Procedural issued eight days after the May 20, 2020 deliberation session.

The Nineteenth Procedural Order dated July 9, 2020, mentioned the NVC comment letter arriving prior to the June 12, 2020 deadline, but did not Rule on NVC's singular request: a hearing, as required by law, to examine the unknowns discussed during deliberations, the changes in limit assumptions, and the minimal effort made by the Applicant to meet the Burden of Proof.

Whether or not the newer, less conservative assumptions/calculations made now are considered okay, better, or worse is immaterial to the Application, as presented in the record and as available to the Intervenor for testimony and cross-examination. The analysis and statements in the testimony can only be considered in the context of the assumptions made. Based on the formal record, and the Applicant's own pre-filed testimony for the hearing from Nathan Dill on behalf of the Applicant, the proper threshold can only be 300 for this record (see Item 18 below from Mr. Dill's prefiled testimony)

18. In recent follow-up conversations with Maine DEP Staff we discussed a desire to develop further understanding of how far-field dilution is related to the age of the discharged water. This understanding is expected to be helpful in the assessment of the impacts of nutrients in the discharge where those impacts depend on complex biochemical processes that do not occur immediately. In response to these discussions, the far-field analysis was used to develop supplemental information based on the amount of time that elapsed since each particle was released in the waterbody. For this analysis 48-hours was selected as a reasonable effluent age at which biochemical processes may begin to take effect on nutrients in the discharge water.... The median dilution within this area varies somewhat with the fortnightly spring-neap tide cycle but remains above 300, with the lowest values associated with neap tide. With respect to nitrogen concentrations, dilution at this level would be sufficient to prevent a measurable increase above the background concentration.

At the hearing, this was reaffirmed by Mr. Dill (line 13 on page 67 to line 68 of the transcript from February 14, 2020):

NATHAN DILL: The analysis that I did was designed to be representative of sort of typical conditions and intentionally neglected influence of wind or, you know, we could -- we could also, you know, try to input a boundary condition to account for the type of non-tidal current maybe driven in by the eastern Maine coastal current that Dr. Pettigrew talked about. We did include the influence of not a maximum flow in the Penobscot River but an average annual flow, so what the average discharge is that comes down the river over an entire year. But we intentionally did

not look at specific weather conditions because -- because if we had then we would have been modeling a specific weather condition.

It's more useful to look at more general conditions and when you do add additional -- when you do add additional forcing to the model it creates additional non-tidal currents which only tend to increase the dispersion of that discharge. So by -- by excluding those -- those the forcings from the model we are providing a conservative estimate. We are likely overestimating what the concentration -- or underestimating what the dilution would be.

As NVC/Upstream's attorney then correctly pointed out, if additional forces could change the dilution factor a change in dilution could occur in each direction (i.e., more or less dilution). If things like wind or turbulent conditions could add more dilution in some instances, then slight wind towards our mooring field and the Edna Drinkwater School's shorefront could also add less dilution in other conditions as well. This is EXACTLY why an average dilution of average conditions is not representative of a conservative assumption for average discharge assumptions.

The statement above by Mr. Dill considers that the minimum threshold from his analysis, and not the average threshold can cover some variation from the average conditions analyzed. Therefore, his sworn testimony is only in context if the conservative lower limit of 300 is assumed to be the dilution factor. Once it was suggested that the threshold should be the average, then the testimony above is no longer valid and a hearing is required for additional testimony and for cross-examination and rebuttal, or a hearing is required for plainly exceeding the 20% threshold per 38 M.R.S. §464(4)(F)(5). The real concern is that if the 20% threshold can be plainly exceeded with generic average conditions, the real potential plume of impact from this facility is unknown since no actual site specific data was collected in the area of concern for the NVC, with this specific project in mind.

The potential for non-constant but unfavorable dilution trends are of extreme interest to the NVC, as the village shoreline is clearly in line with certain possible dilution trends and not others. It does not matter to the NVC, which way BEP decides to go. BEP can either reopen the hearing for a new discussion on wastewater discharge, or it can hold the required hearing for the proposed project exceeding the anti-degradation threshold based upon the Applicant's modeling assumptions. But one or the other needs to happen before these draft FINDINGS AND CONDITIONS can be lawful.

At no time did Nordic Aquafarm's ever suggest that they would exceed the anti-degradation threshold that would trigger this hearing requirement. Therefore there could never have been a need or an *"opportunity for public participation"* to discuss whether this permit is *"necessary to achieve important economic or social benefits to the State."*

The NVC, Northport, Belfast, Islesboro, etc. have relied on the water quality in this exact proposed discharge for its own economic benefit and social benefit for over 150 years. Any potential degradation of water quality in this area and the potential economic and social losses must be discussed within the context of the very minor economic benefits from this singular proposed project. While the Proposed project is huge for one site and for its proposed discharge in shallow waters, this proposed Aquafarm, and this location, is not the only option for the state economically. It is one of many land-based

aquafarm opportunities proposed or taking place throughout the State of Maine. In fact, there is another similar facility proposed at a much more suitable brownfields site that will discharge to a free-flowing river from an existing outfall with known dilution and mixing, within 15 miles of this proposed site. Therefore the statement in 3(e) of the draft FINDINGS AND CONCLUSION is simply not accurate, and should be removed:

(e) Where a discharge will result in lowering the existing water quality of any waterbody, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

Again, the burden of proof during any additional hearing is on the Applicant. In addition to any local economic benefits to the host community, it must consider the “net economic benefit” or “net economic detriment” to the area by including the potential economic and social losses to the area from reduced water quality from both the normal or average continuous discharge discussed in the Application, as well as the same baseline average condition with the inclusion of periodic and varying upset conditions.

While the NVC does not, and will not, attempt to define any upset conditions, the NVC will point out, once again, none have been proposed or analyzed to date by the Applicant. And given that all wastewater treatment processes include varying physical and biological conditions even during normal operations, it is simply not realistic to expect the proposed optimal removal rates of 99+% and 85+% for different discharge parameters at all times, especially since there will always be expected, but unplanned, abnormal equipment failures.

Again, as stated before, please note that a drop from 99% removal to 95% removal may seem harmless or insignificant from a percentage basis, but 95% removal is a five-fold increase in loading from a 99% removal promise. The potential economic and social impact from the abnormal but expected failures must also be part of any prospective “net benefit” discussion. Now that Nordic has been allowed to alter the record to substitute a more favorable, if unverified, average dilution ratio, the percent removal (and the actual background assumptions) is even more important. But the record is closed so we cannot offer the records on how infrequently any wastewater treatment plant ever meets its design “maximum” or “optimal” running condition, especially since the treatment plant is not the “development”

The primary goal for this Applicant is not, and never will be, to optimize the wastewater treatment plant operations. Wastewater treatment is an ancillary function for the Applicant. The primary goal, as presented by the Applicant in the record, is to optimize the “development”, which is a fish factory for rearing, slaughtering and filleting, millions upon millions of eating, growing, and defecating fish in an ever changing biological environment. As conditions drift, adjustments must be made to the fish rearing activities that will alter the wastewater operations. These changes will not be made to optimize wastewater treatment.

As a result, the ancillary wastewater treatment process will also include an ever changing environment. This is why there are average and maximum limits typically included any wastewater discharge permit. Analyzing BOTH average and maximum potential discharge scenarios are required and important to

predict the extent of pollution that will be caused by the development. If average dilution ratios are now needed instead of the conservative minimums assumed in the record, then discussing and analyzing the potential conditions that can lead to the maximum limits are paramount. If the less conservative (optimal removal percentages) wastewater discharge assumptions and conservative (minimum) dilutions proposed are a concern, then what will happen when daily/weekly maximum discharge loadings occur.

There is a reason for the 20% threshold for holding a hearing. If one cannot easily show that their project will be well below that threshold at all times, with all conservative assumptions, then there may be a potential for significant degradation, or even classification exceedances in some of the worst-case instances that have not been analyzed by this Applicant.

We hope you consider aligning all of the permit review and comment periods up together, and also schedule the required hearing as soon as possible.

Thank you for considering these requests.

Sincerely,



John Spritz, President

Northport Village Corporation

Attachments:

Attachment 1: 6/12/2020 NVC Letter Requesting Compliance with 38 M.R.S. §464(4)(F)(5)

Attachment 2: 7/30/2020 NVC Letter Air Permit Application Process Logistics Questions

Attachment 3: 8/7/2020 BEP Letter to NVC Regarding NVC 7/30/2020 Letter

Attachment 4: 7/9/2020 Nordic Aquafarms Nineteen Procedural Order

Attachment 1



813 Shore Road
Northport, Maine 04849
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June 12, 2020

Hon. Robert S. Duchesne, Presiding Officer
Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04330

RE: Nordic Aquafarms, Inc. Required Compliance with 38 M.R.S. §464(4)(F)(5)
File No. A-14-781-A-N
 L-28319-26-A-N
 L-28319-TG-B-N
 L-28319-4E-C-N
 L-28319-L6-D-N
 L-28319-TW-E-N-N
 W-009200-6F-A-N

Dear Presiding Officer and Board of Environmental Protection:

As the Northport Village Corporation (NVC) has expressed previously, there is concern that the Applicant proposes to continually discharge 24 hours a day/365 days a year at very high proposed pollutant removal rates, with zero allowance for upset conditions. The NVC takes exception to the reworking of the modeling and data analysis assumptions in the far-field dilution calculations, and/or decreasing the allowable effluent concentration requirement, after the record has closed and beyond what the Applicant testified that it could meet each day, 24-hours a day, every day of the year. It is not necessary to “check a box” of 20% anti-degradation or less, and forgo the required hearings and public participation to proceed with this permit review and approval. There is a good rationale for 38 M.R.S. §464(4)(F)(5), and this Applicant’s record, as presented by the Applicant, has triggered this requirement.

The Applicant’s own testimony proposes the 300 dilution factor as representative for this project. Instead of suggesting that an average of their modelling should be used, the Applicant has stated multiple times that the 2D model used was not very accurate, and therefore they were proposing the lowest dilution factor. The emails provided from the Applicant as part of the discussion and rationalization for dilution leading up to the deliberation sessions are still discussing the relative impact to, and size of, the Penobscot Bay overall. Only after a true cost-benefit analysis of the opportunity costs *and risks of this particular facility* to the State shall the BEP be able to act on this wastewater discharge application, based upon the Applicant’s testimony on the record.

Clear modelling results and testimony provided by the Applicant suggest that the degradation rate easily could be more than one-third of the allowable incremental increase. There is no valid justification to override the Applicant's testimony and change their assumptions, as their assumptions do not preclude this facility from receiving a permit. On the contrary, there is still a clear pathway to permitting with the Applicant's assumption on the record.

Exceeding the anti-degradation threshold of 20% does not prohibit the project. Based upon the size of the facility and the amount of waste (even with the state-of-the-art wastewater treatment removal assumptions proposed), on a local level there will be some adverse impact. The DEP anti-degradation finding acknowledges that there will be some adverse impact and requires the proper hearings and cost benefit analyses to justify it based upon the Applicant's testimony in the record.

Exceeding 20% degradation does not suggest that the Applicant will therefore exceed 100%. To the contrary, the DEP findings suggest the facility would be below 100% degradation; therefore, the anti-degradation findings do not preclude the Applicant from receiving a permit. Our perception is that this significantly large project has the potential to degrade the NVC's little corner of the bay to some extent. The Applicant must weigh the cost benefits to the State versus some localized water quality degradation and demonstrate that it meets 38 M.R.S. §464(4)(F)(5):

(5) The department may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, which would result in lowering the existing quality of any water body after making a finding, following opportunity for public participation, that the action is necessary to achieve important economic or social benefits to the State and when the action is in conformance with subparagraph (3). That finding must be made following procedures established by rule of the board.

It is imperative that the immediate neighbors of the facility, including the NVC, the City of Belfast, the Town of Searsport, The Town of Islesboro, and the Town of Northport and their residents, have an opportunity to discuss the potential economic and social benefits, as well as the economic and social tradeoffs, the proposed project could yield.

Please schedule as soon as possible the required meetings to review the important economic or social benefits from this proposed project that will justify lowering the water quality in Penobscot Bay on normal condition days and upset condition days, in an area very close to the NVC's Historic District, mooring field, wharf, swim dock, children's sailing school, and beach.

Thank you for the Board's consideration of this comment.



John Spritz

President, Northport Village Corporation

Attachment 2



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July 30, 2020

Hon. Robert S. Duchesne, Presiding Officer
Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04330

File No:

A-14-781-A-N
L-28319-26-A-N
L-28319-TG-B-N
L-28319-4E-C-N
L-28319-L6-D-N
L-28319-TW-E-N-N
W-009200-6F-A-N

RE: Air Permit Application Process Logistics Questions

To the Presiding Officer and Board of Environmental Protection:

On May 20, 2020, BEP held its last formal public deliberations. During that meeting there were outstanding air quality items of concerns and needs raised. Some comments specifically related to the applicability of air emissions from this application and possible conditions that could be in either, or both this license and/or site conditions. including interactions with respect to stack heights and buildings, vehicle emissions, batch plant, etc.

On July 17, 2020, BEP issued the Air Permitting draft Findings of Fact from the Department of Environmental Protection (DEP), the Draft Order from the Board of Environmental Protection (BEP) based upon those draft Findings of Facts, and the draft Air Permit based upon the draft BEP Order. It was our understanding that draft findings would come out first, so that they could be commented upon with respect to relevancy and completeness.

While "Facts" themselves are not subject to comment, there is the potential for discussion of wording, relevancy, and omission of Facts--and therefore the Finding of Facts are subject to comment and revision.

There are literally thousands upon thousands of pages of material in the record, some of it contradictory, and some of it begging for more information or clarification.

If the draft Findings of Facts were to change for any reason, then the Board's draft Order would need to change accordingly, and be sent out for comment again. If the draft Order changes, then the air license would need to be redrafted again, and so on. This iterative process suggests that the Draft Order and Draft Air Emission license may be premature. Combining these elements together may have made for timely review, but providing each item for comment first would seem to be timelier than this approach, if DEP does plan to revise the Draft Findings of Facts by incorporating comments.

More importantly, this combined DEP memo reveals the DEP conclusion as it solicits comments on what should be proposed facts and conclusions. The way DEP has done this, comments from citizens, intervenors, anyone but Nordic, are irrelevant and useless because the conclusions which might have been influenced by the comments by anyone else other than the Applicant, have already been written. This process not only violates fundamental fairness and due process, but it is not at all what was expected from the last public deliberation process, or the many meetings, hearings, and orders prior. DEP owes the citizens who have been deeply involved in the process an unbiased summation of the Application and not simply suggest a forgone conclusion when summarizing its Findings of Facts.

Therefore, the Northport Village Corporation Requests a Single Purpose Comment Process for a Facility of this Size and Complexity. We request that the Draft Finding of Facts be extracted from the Draft Order and the draft license for comments first with respect to completeness, relevancy and omission of facts.

In addition, we have concerns regarding the Chapter 115 license. It was understood that DEP desired to compartmentalize the air emission process by splitting the process into the Chapter 115 license for the 8 engines at the hearing and then everything else for written comment. We repeatedly argued that one could not testify on one without the other with respect to compliance with the Clean Air Act and interrelated nuisance air contaminants to no avail, but the hearing process is now over.

SLODA requires that the air emissions of the facility-wide construction, operations, and maintenance actives be considered for its Findings of Facts. We believe that it is imperative that emissions from the entire "facility" or "source" for construction, operations, and maintenance be examined together before someone can reasonably comment on these specific emission units. **Therefore, we request to delay Chapter 115 Comments so that they can be discussed with SLODA Air Emissions.**

Finally, we request that BEP extend the deadline for the Chapter 115 draft Finding of Facts comments to coincide with the comments from the SLODA application draft Findings of Facts.

Thank you for considering these requests.

Sincerely,



John Spritz, President, Northport Village Corporation

Attachment 3

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

Mark C. Draper, Chair

Cynthia S. Bertocci
Executive Analyst

Ruth Ann Burke
Board Clerk

Sent by electronic mail only

August 7, 2020

John Spritz, President
Northport Village Corporation
813 Shore Road
Northport, Maine 04849
nvcmaine@gmail.com

RE: Nordic Aquafarms, Inc.'s Proceeding

Dear Mr. Spritz:

I have reviewed and considered your letter of July 30, 2020, in which Northport Village Corporation (NVC) comments on the structure of the staff recommendation on Nordic's Chapter 115 Air Emissions application, requests a different approach where proposed findings of fact are commented upon before a proposed order is issued for comment, and requests that the deadline for comment on the proposed Chapter 115 air emissions order be changed to coincide with the deadline for comment on the staff proposed order on Nordic's Site Location of Development/Natural Resources Protection Act (Site/NRPA) application.

The staff recommendation on Nordic's Chapter 115 application is in the form of a proposed Board Order which, if adopted by the Board, would become the proposed facility's air emissions license. This is the Department's standard format for Air Emissions licenses. Although the format will differ in some regards, the staff's recommendations for the other license applications will also contain proposed findings of fact and conclusions. With respect to your comments regarding "Findings of Fact," while new evidence may not be introduced, persons may comment on errors, omissions, and suggest alternative findings with citations to the record. Any changes to the factual findings based on comments received may result in corresponding changes to conclusions regarding compliance with the licensing criteria, and any conditions imposed if a license were to be granted. The inclusion and consideration of findings, conclusions, and conditions in a single document allows for changes in any portion of the document in response to comments received.

NVC also requests that the comment period on staff's Chapter 115 air emissions recommendation be extended to coincide with the deadline for comment on the staff recommendation/proposed Board Order for Nordic's Site /NRPA application. NVC has argued throughout this process that consideration of the Chapter 115 air emissions requirements be merged with consideration of the Site/NRPA air quality requirements. However, the air emission sources and activities under consideration are distinct from one another and are regulated pursuant to different laws. The emission units that require licensing under Chapter 115 are Nordic's proposed eight 2-MegaWatt (MW) diesel engines. Other activities with the potential to impact air quality are more appropriately regulated under the Site Law and will be addressed in that staff recommendation. To the extent comments received on the Chapter 115 recommendation are more appropriately addressed under Site Law, those comments will be

considered in that context. The Board will consider staff recommendations and public comments on all three of Nordic's pending applications together before issuing a decision on any one application.

With respect to the comment deadline, Department statute and rules require a 15 working day comment period for the Chapter 115 staff recommendation/proposed Board Order, which I previously extended to 30 calendar days. The request to further extend the comment deadline to coincide with the deadline for comment on the Site/NRPA staff recommendation/proposed Board Order is denied. Persons are encouraged to focus their comments on the Chapter 115 recommendation on the air emissions sources that require licensing pursuant to that chapter.

Sincerely,

A handwritten signature in cursive script that reads "Robert S. Duchesne". The signature is written in black ink and is positioned above the typed name.

Robert S. Duchesne, Presiding Officer
Board of Environmental Protection

cc: Service List

Attachment 4



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

The Board of Environmental Protection (“Board”) held an adjudicatory hearing in Belfast from February 11 through February 14, 2020 on Nordic Aquafarms, Inc.’s (“Nordic’s”) applications for permits for an Atlantic salmon land-based aquaculture facility proposed to be located in Belfast and Northport. This Procedural Order addresses requests and filings submitted by intervenors following issuance of the Eighteenth Procedural Order.

1. Proposed Wastewater Discharge / Far-Field Dilution Factor

In response to issues regarding the far-field dilution factor that were raised after the Board’s deliberative session on Nordic’s applications, the record was re-opened pursuant to the Seventeenth Procedural Order (May 28, 2020) for the limited purpose of receiving the following information:

- a) the pre-deliberation communications from Nordic and/or its representatives with Department staff pertaining to the far-field dilution factor that occurred after distribution of the staff briefing memorandum on May 15, 2020;
- b) the technical data underlying *Figure 2. Time series of areal dilution distribution within region containing diluted effluent with median age between 1.5 days and 2.5 days old*, in the November 3, 2019, memorandum from Nathan Dill to Nordic Aquafarms (Nordic Pre-Filed Direct Testimony, Exhibit 23, Figure 2) (“Figure 2”); and
- c) comments by the intervenors on the appropriate far-field dilution factor and comments on the new underlying data submitted by Nordic.

Department staff provided the requested correspondence between Department staff and Nordic’s consultants to Board staff via electronic mail on May 29, 2020 at 2:01 p.m. Board staff forwarded this information to the parties by electronic mail on May 29, 2020 at 3:59 p.m.

Nordic provided the requested technical data underlying Figure 2 to the Board and the parties via electronic mail from Elizabeth Ransom on May 29, 2020 at 4:08 p.m. The response consisted of a two-page letter, Attachment A: May 18, 2020 Email from Nathan Dill, and Attachment B: Microsoft Excel Dilution Data File.

The deadline for intervenors to comment on the appropriate far-field dilution factor was Friday, June 12, 2020.

Following issuance of the Seventeenth Procedural Order, the Board received several requests regarding revision of the far-field dilution factor which were ruled on in the Eighteenth Procedural Order (June 2, 2020). The deadline for intervenors to comment on the appropriate far-field dilution factor remained Friday, June 12, 2020.

Upstream Watch (“Upstream”) and Northport Village Corporation (“NVC”) filed comments on the far-field dilution factor by the comment deadline. The following persons commented on behalf of Upstream: John Krueger, Gary Gulezian, Dr. Kyle Aveni-Deforge, and Sean Beachum. John Spritz commented on behalf of NVC.

Motion to Strike Communications between Nordic and Department Staff. On June 10, 2020, Upstream renewed its May 26, 2020 motion to strike the post-hearing communications between Nordic and/or its representatives and Department staff regarding the far-field dilution factor. Upstream argues that the communications “contradicted material testimony presented to the BEP by Nordic in its sworn pre-filed material and it contradicted the sworn testimony of Nordic’s witnesses, Nathan Dill, at the [H]earing conducted from February 11-14, 2020.” Upstream argues that the revised material was not shared with the other parties, was not sworn, and was not subject to cross-examination or rebuttal testimony in violation of the rules governing the Board’s proceeding and Upstream’s due process rights.

Ruling. The rulings on Nordic’s communications with Department staff regarding the far-field dilution factor remain as set forth in the Seventeenth and Eighteenth Procedural Orders. The intervenors were provided an opportunity to comment on these submissions and the far-field dilution factor, and Upstream and NVC have done so. The motion to strike is denied.

2. Motion to Cease Processing of Nordic’s Applications and Admit Additional Evidence

On June 26, 2020, Kim Ervin Tucker, on behalf of intervenors Jeffrey R. Mabee, Judith B. Grace, and Lobstering Representatives (“MGL”), stated that the U.S. Army Corps of Engineers (“Corps”) has finalized a Sampling and Analysis Plan (“SAP”) for the Corps process of assessing Nordic’s proposal to dredge in the coastal wetland for installation of its proposed pipelines. MGL requested that the Board take no action on Nordic’s pending applications until sediment testing in accordance with the SAP is completed, that those results be admitted into the record of the Board proceeding, and that the results be considered by the staff and the Board.

On June 26, 2020 at 3:14 p.m., Joanna Tourangeau commented on behalf of Nordic that Nordic has agreed to all of the Corps’ SAP requirements and that, “Nordic makes no objection to cross references to the USACOE SAP within a Department NRPA/WQC order.”

MGL subsequently sent a copy of the SAP to Board staff by electronic mail on June 26, 2020 and again requested that consideration of Nordic’s pending applications cease until Nordic has completed the sediment testing in accordance with the SAP and the results admitted into the record of the Board’s proceeding, and until the Department of Marine Resources, after considering those test

results, conducts a new assessment of the impact of Nordic’s proposed project on fisheries, the fishing industry, and the environment and economy of Penobscot Bay.

On June 26, 2020, Michael Lannan, on behalf of NVC, commented on the application review process and argued that, “If this SAP is going to be used to try to fill the void in the proper and necessary information required in the BEP permitting prior to permit submission, then it is most certainly part of the BEP process, and it should be considered new testimony.”

Ruling. Except for the limited matters set forth in the Eleventh and Seventeenth Procedural Orders, the Board’s evidentiary record closed on February 18, 2020. The Board has previously denied requests to stay processing of Nordic’s applications for the purpose of obtaining additional information regarding the impacts of Nordic’s proposed dredging in the coastal wetland including requests that the Board require Nordic to conduct additional sediment sampling and analysis, that the Board re-open its record to admit additional sediment data, and that the Board require a separate MEPDES permit for dredging in the coastal wetland (Thirteenth, Fourteenth, Fifteenth, Sixteenth, and Seventeenth Procedural Orders).

As previously stated, Nordic must obtain all required local, state, and federal approvals for its proposed project including a permit from the Corps for its proposal to dredge in the coastal wetland. The SAP submitted by MGL has been developed by the Corps as part of the Corps’ review of Nordic’s federal level application to dredge in the coastal wetland. The request that the Board cease processing of Nordic’s State applications pending the results of the sediment sampling and analysis required by the Corps and to consider those results in the Board’s assessment of Nordic’s applications is denied. The Board will judge Nordic’s applications on the evidence in the Board’s record.

DONE AND DATED AT AUGUSTA, MAINE THIS 9th DAY OF JULY, 2020.

BOARD OF ENVIRONMENTAL PROTECTION



BY: _____
Robert S. Duchesne, Presiding Officer