



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