



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

BOARD ORDER

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/WASTE DISCHARGE LICENSES
L-28319-26-A-N)
L-28319-TG-B-N)
L-28319-4E-C-N) TWENTY-THIRD 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. In accordance with provisions of 38 M.R.S. § 344(4-A)(B) and Chapter 3 § 27(B) of the Department's *Rules Governing the Conduct of Licensing Hearings*, the Department staff issued draft proposed decision documents for each of Nordic's applications to the parties and interested persons with opportunity to comment. This procedural order addresses objections to comments on the Site Location of Development / Natural Resources Protection Act (Site Law/NRPA) draft proposed Board order.

1. On September 4, 2020, a draft proposed Board order evaluating Nordic's Site Law/NRPA application was made available for public comment. The deadline for comment was October 5, 2020.
2. The Board received written comment on the draft Site Law/NRPA proposed Board order from Nordic, intervenors Northport Village Corporation (NVC) and Upstream Watch (Upstream), and the Belfast Water District.
3. By letter dated October 9, 2020, Nordic objected to the following comments of NVC and Upstream: (a) comparisons to the Whole Oceans project in Bucksport; (b) excerpts from a September 24, 2020 deposition by James Dorsky in the quiet title action pending in Superior Court; (c) comment on the nature of the agreement between Nordic, the City of Belfast, and the Belfast Water District; (d) comment on the status of an option for Nordic to purchase the Lower Dam; and (e) comment on the Bayside Historic District. In its objection, Nordic characterizes these comments as an "attempt to improperly submit new, false and/or misleading evidence after the close of the record."

4. By letter dated October 16, 2020, NVC responded to Nordic's objections. In brief, NVC states that comparisons to the Whole Oceans' project serve to illustrate NVC's view that Nordic's application is incomplete and inappropriately relies upon conditions in the permit to provide information on the relevant licensing criteria that NVC argues should have been provided during the licensing proceeding for review and comment by parties and the interested public. With respect to the excerpt from Mr. Dorsky's deposition, NVC argues that it is relevant to the issue of TRI and that the Board should take official notice of it. With respect to ownership of the Lower Dam, Nordic's agreement with the City and the Belfast Water District pertaining to freshwater supply, and the listing of Bayside on the National Register of Historic Places, NVC argues that the information is in the record and can be cited in NVC's comment on the draft proposed Board order.

Ruling: NVC's comparisons of the applications filed by Nordic with those filed by Whole Oceans are not admitted into the record for the Board's consideration of Nordic's applications. Whole Oceans' project is not before the Board. The issue before the Board is whether Nordic's applications meet the relevant licensing criteria, not whether one application is better than another, or is proposed for a more suitable site. The Board generally does not consider the comparison of a pending permit application with a previously approved or denied application for a different project as the entire record of the previous application is not in evidence and, more fundamentally, the issue is not whether one project is preferable but rather whether the pending application meets the criteria for obtaining a permit. Accordingly, the following NVC's statements of comparisons to the Whole Oceans' application and project will be redacted:

- Page 2, paragraph 3, beginning "The NVC (and other intervenors)" to the end of the page and ending "...discharge into the Penobscot Bay";
- The final paragraph in Sections labeled 1, 2, 3, 4, 5 and 20, 6, 7, 8, 9 and 10, 11, 12 and 13 and 19, 14, 15, 16, 17, 18 and 22, and 21 comparing Nordic with the Whole Oceans' project;
- Section 21, second sentence, delete "(like there is at the Whole Oceans Aquafarm site in Bucksport)";
- Conclusions, page 17, second paragraph, delete "(See Whole Oceans Project Under Construction in Bucksport)"; and
- Attachment 1: Column 6 "What Areas in Whole Oceans Application..." and Column 7 "Whole Ocean's Site Suitability Versus Nordic Aquafarms".

The excerpt from the James Dorsky deposition on September 24, 2020 cited on page 6 of Upstream's October 5, 2020 submission (beginning "On July 29, 2020 in a deposition..." to the end of the paragraph) is not admitted to the record and will be redacted from Upstream's comments on the draft Site Law/NRPA proposed Board order. The Board will not take official notice of this excerpt from a deposition.

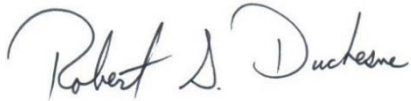
Information on surface water supply, ownership and option for purchase of the Lower Dam, and the historic status of Bayside are within the record and are allowed.

Finally, although not objected to by Nordic, Upstream's comment letter cites on page 37 a fish kill that occurred at Atlantic Sapphire Denmark in March 2020 which is after the evidentiary record in this proceeding closed for all but certain specified matters.

Accordingly, the sentence beginning, “Recently in the news (Early March 2020)” and ending “back by about four months” is redacted.

DONE AND DATED AT AUGUSTA, MAINE THIS 21st DAY OF OCTOBER, 2020

BOARD OF ENVIRONMENTAL PROTECTION

A handwritten signature in cursive script that reads "Robert S. Duchesne".

BY: _____
Robert S. Duchesne, Presiding Office