

Bertocci, Cynthia S

From: Joanna B. Tourangeau <JTourangeau@dwmlaw.com>
Sent: Wednesday, November 06, 2019 3:08 PM
To: 'Sally Brophy'; Burke, Ruth A; Bertocci, Cynthia S; Bensinger, Peggy; Boak, Scott; Jensen, Laura; DEP, Nordic Aqua Farms; Martin, Kevin; peter.tischbein@usace.army.mil; erik.heim@nordicaquafarms.com; mn@nordicaquafarms.com; ec@nordicaquafarms.com; elizabeth.ransom@ransomenv.com; Kim Ervin Tucker; Ellie Daniels; Mike Lannan; nvcmaine@gmail.com; bcostapierce@une.edu; ctilburg@une.edu; don@gmri.org; dbraybrook@yahoo.com; Lawrence Reichard
Cc: David M. Kallin
Subject: RE: Intervenor Appeal Regarding Nordic Aquafarms
Attachments: NAF Air Quality Study Review draft-1.pdf; Revised List of Issues (11-5-2019).pdf

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The attached Upstream Watch ("Upstream") appeal requests Board or Environmental Protection ("Board") confirmation that consideration of compliance with Chapters 100 and 115 of the Maine Department of Environmental Protection's ("Department") Rules will be completed pursuant to SLODA/NRPA hearing topic 5. In the alternative, Upstream requests that the Board overturn the Presiding Officer's determination that Chapter 115 air emissions is not a hearing topic.

Chapters 100 and 115 of the Department's Rules regulate minor new sources of air emissions. Nordic Aquafarms Inc. ("Nordic" or "NAF") submitted an application for a Chapter 115 Minor New Source License. This application is under review by the Board and the Department's Air Bureau pursuant to air regulations, not SLODA. In order to demonstrate under SLODA that a project will have "no unreasonable adverse effect on air quality," Chapter 375 of the Department's Rules requires that the SLODA application include "[e]vidence that an Air Emission License has been or will be obtained." Chap. 375 at 1(C)(1). Thus, Nordic's SLODA application includes a copy of the Chapter 115 Minor New Source Application (see Nordic's SLODA Application at Section 21). This crossfiling requirement does not create jurisdiction to review air emissions pursuant to SLODA. Substantive review of compliance with Chapters 100 and 115 falls to the Department's Air Bureau and the Board. At least since August, Director Kennedy of the Air Bureau has reported to the Board and Intervenor that review of the Chapter 115 application was complete and without outstanding information requests. Consequently, Upstream's request that the Board confirm that review of the Chapter 115 application is being completed pursuant to SLODA/NRPA hearing topic 5 should be rejected as inconsistent with SLODA.

The Presiding Officer correctly excluded the Chapter 115 minor new source application as a hearing topic. The list of requested hearing topics prepared by Executive Analyst Bertocci was four single spaced pages long and included 35 topics, many with subtopics. Many of these hearing topics were requested by numerous Intervenor. Only two Intervenor, Upstream and Northport Village Corporation ("NVC"), requested inclusion of air emissions as a hearing topic. While this appeal is purportedly only from Upstream, the representative for NVC (Mr. Mike Lannan) is Upstream's cited expert. Thus, it appears that there is effectively only one Intervenor requesting this addition. The Department has not presented significant questions regarding air emissions under Chapter 115 that would necessitate submission of expert testimony or justify inclusion as a hearing topic. Further, the exclusion of this issue as a hearing topic does not prevent the parties from commenting on the issue.

Nordic respectfully requests that the Board uphold the Presiding Officer's decision to exclude Chapter 115 air emissions as a hearing topic.

Thank you for your review.

Respectfully Submitted,
Joanna

-----Original Message-----

From: Sally Brophy <sallybrophy@icloud.com>

Sent: Tuesday, November 5, 2019 1:13 PM

To: ruth.a.burke@maine.gov; Cynthia S Bertocci <Cynthia.s.bertocci@maine.gov>; peggy.bensinger@maine.gov; scott.boak@maine.gov; laura.jensen@maine.gov; nordicaquafarms.dep@maine.gov; kevin.martin@maine.gov; peter.tischbein@usace.army.mil; erik.heim@nordicaquafarms.com; mn@nordicaquafarms.com; ec@nordicaquafarms.com; Joanna B. Tourangeau <JTourangeau@dwmlaw.com>; elizabeth.ransom@ransomenv.com; Kim Ervin Tucker <k.ervintucker@gmail.com>; Ellie Daniels <ellie@gree>; Mike Lannan <mlannan@techenv.com>; nvcmaine@gmail.com; bcostapierce@une.edu; ctilburg@une.edu; don@gmri.org; dbraybrook@yahoo.com; Lawrence Reichard <lreichard@gmail.com>

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The previous file sent was incomplete, please refer to the attached files.