



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mark C. Draper, Chair

Cynthia S. Bertocci
Executive Analyst

Ruth Ann Burke
Board Clerk

JANET T. MILLS
GOVERNOR

MEMORANDUM

To: Parties to the Nordic Aquafarms' Application Proceeding
From: Cynthia Bertocci, Board Executive Analyst
Re: Response to Questions Pertaining to the Fourth Procedural Order
Date: November 13, 2019

On November 8, 2019 Presiding Officer Robert Duchesne issued the Fourth Procedural Order governing the Board's consideration of Nordic's applications. In that order, the Presiding Officer established a schedule for the proceeding and set the hearing for the week of February 10, 2020.

By electronic mail on November 11, 2019, Upstream Watch stated its concerns regarding the schedule and, in particular, the deadlines near the holiday weeks of December 23 and 30. Presiding Officer Duchesne has considered Upstream Watch's concerns and believes that they may be addressed, in part, through clarification of the nature of the various deadlines and associated filings. Additionally, since filings may be made electronically, there should be no reason for participants and their witnesses to change travel arrangements or other holiday plans.

Nature of Filings

Deadline for submission of direct testimony on the hearing issues: December 13, 2019. This deadline pertains to the issues to be addressed at the hearing. The deadline for written submissions on non-hearing issues is the close of the hearing record, which is generally the close of the hearing, in this case the second week of February 2020.

Nordic's applications were accepted as complete for processing on June 13, 2019, and it is assumed that the parties have been actively engaged in reviewing Nordic's applications and supporting documentation since that time. The Department has requested additional information from Nordic since accepting the applications, and those information requests and Nordic's responses thereto have been shared with the parties and posted on the Department's webpage allowing the parties to follow the information exchange. While the most recent submission is large, Department staff has reviewed it and much of the information contained in the submission is not new.

To aid the intervenors in their review of the most recent submission, the applicant is asked to submit a description, in the form of a list, of each portion of the November 5, 2019 submittal, with a statement of what aspect of that portion of the submittal is revised from previous submittals, or new. This description of the revised or new items contained in the recent submittal

must be sent to the Board, Department staff and the Service list by 5:00 p.m. on November 21, 2019.

Objections to Pre-Filed Testimony. Motions to strike testimony are generally based on arguments that the testimony is not relevant to one of the criteria designated as a topic for the hearing. As stated in prior procedural orders, the parties have been urged to focus their review of Nordic's applications on evidence relevant to the licensing criteria. If testimony is so focused, motions to strike testimony as irrelevant should be relatively few.

Responses to Objections/Motions to Strike Testimony. If a party has focused its testimony on the licensing criteria that are the subjects of the hearing, and the party has identified in advance of the filing which criterion or criteria the testimony addresses, responses to any motions to strike should be relatively short and straight-forward. Responses to such motions do not require extensive argument, but rather should clarify how the testimony relates to a relevant criterion.

Appeals of Rulings by the Presiding Officer. Any appeal of a Presiding Officer's ruling on an objection to testimony or a motion to strike testimony may be in the form of a brief email to the Board stating that the party is appealing a specific ruling and stating briefly the basis of the appeal. It need not include extensive written argument. Oral argument in support of the appeal and in response to the appeal will be heard by the Board at the Board meeting.

Schedule

As stated above, there should be no need for any party or its witnesses to change travel arrangements or holiday plans to accommodate the Board's schedule for this proceeding. With the exception of the pre-filed testimony (which requires paper copies in addition to an electronic copy), all filings are made electronically; and the parties may communicate electronically with Department staff. The bulk of the work to prepare for the hearing is the preparation of direct and rebuttal testimony. Such testimony may include identification of information the party believes to be in error or identification of omissions in Nordic's applications upon which Nordic may be questioned at the hearing.

Beyond this additional information for the benefit of the parties, in response to the filing dated November 11, 2019 by Upstream Watch, the Presiding Officer has decided to make a minor adjustment to two deadlines established in the Fourth Procedural Order.

- The deadline for responses to objections to pre-filed direct testimony is moved from Friday, December 27, 2019 at 5:00 pm to Monday, December 30, 2019 at 5:00 pm.
- The deadline for any appeal to the Board of the Presiding Officer's ruling on objections to direct testimony is moved from Friday, January 3, 2020 at noon to Monday, January 6, 2020 at 5:00 pm.

Communications with Department Staff

Upstream Watch asks which DEP staff members intervenors should contact if they have questions regarding Nordic's application and subsequent submissions. It is premature to ask

staff to discuss their analysis of Nordic's applications since staff's analysis will continue throughout the hearing process and any post-hearing filings.

However, questions regarding where certain information can be found in the applications, and whether a specific document, such as a plan, is the most recent version of that document, are appropriate and may be addressed to either the applicant or the appropriate Department staff: Beth Callahan (Site Law/NRPA), Gregg Wood (waste discharge), or Patric Sherman (air emissions) at the common email address: NordicAquaFarms.DEP@maine.gov.