

FINAL SITE PLAN PERMIT APPLICATION

1. PROCEDURAL DECISIONS OF BELFAST PLANNING BOARD, PRELIMINARY PLAN AND FINAL PLAN.

7.4 Right, Title and Interest

August 5, 2020 Decision of Board

ISSUE #1 THAT IS THE SUBJECT OF THIS APPEAL

The applicant lacks Right, Title or Interest to the critical Eckrote property.

An applicant must demonstrate that they have right, title and interest (control) to the property that they propose to develop. The Planning Board considered this issue at its meeting of August 5, 2019, including accepting written comment in accordance with Board Procedural Order # 1; no oral comment was accepted at the August 5 public hearing. William Kelly, City Attorney, described his review of all information submitted to the Board by the Applicant and other parties, and his review of recent findings by both the Department of Environmental Protection and the Department of Agriculture, Conservation and Forestry (Submerged Land Lease Permit) on this same issue, while stating that this ultimately is a decision of the Court. Attorney Kelly noted that an applicant, at this point, must demonstrate that they have sufficient interest in a property.

The Planning Board, at its meeting of August 5, 2019 adopted a motion to find that Nordic Aquafarms had submitted sufficient information to demonstrate that they have right, title and interest to the property that they propose to develop for the purposes of Planning Board review of all Permit applications.

Several times during the Board's consideration of the Nordic permits, the Board was presented with opportunities to examine "Right, Title or Interest" to the Eckrote land and adjacent intertidal land, but the Board declined to do so and deferred that issue to the Superior Court, where a "Quiet Title" lawsuit is filed concerning the Eckrote property and adjacent intertidal land. The Board should have examined those title issues, found that the Eckrotes do not own the intertidal land between their upland and Penobscot Bay and dismissed the applications. This Board, the ZBA, should do so now.

11. PLANNING BOARD REVIEW OF FINAL SITE PLAN PERMIT APPLICATION.

ISSUE #2 THAT IS THE SUBJECT OF THIS APPEAL

Nordic never answered many of the questions addressed to it by the Planning Board.

Nordic submitted its Final Site Plan application on August 26, 2020. Nordic's submissions addressed the requests for additional information identified by the Planning Board during its review and approval of the Preliminary Site Plan application.

Analysis of unanswered questions posed by the planning board to Nordic on 10/21/20 and addressed on 10/28/20. For this analysis we assumed the record to be what exists on the City of Belfast website under the Nordic Aquafarms permit applications:

<https://www.cityofbelfast.org/413/Nordic-Aquafarms-Permit-Applications> as well as Nordic Aquafarms Permit - Final Site Plan <https://www.cityofbelfast.org/478/Nordic-Aquafarms-Permit---Final-Site-Pla> and all available recordings of the planning board meetings from 2018-2020.

Questions posed to Nordic Aquafarms by the planning board on October 21, 2020 and addressed on October 28, 2020

1. What will the expected vehicle count per day during construction, phase 1 production and phase 2 production?

Although there is mention of "material distributed on January 29, 2020", nothing appears in the record. In addition, in an email dated June 1, 2020 from Wayne Marshall, he states "With respect to traffic issues, I have reviewed information submitted to the City and have not found any supplemental information submitted by Nordic regarding off-site traffic."

2. What is the latest on the green roof engineering?

Nordic responded that it will be provided once final design phase is initiated.

3. What is the plan for solar panels on the site?

No plan was provided

4. What are the proposed destinations of the excavated soils and how could these affect certain intersections such as Rt1/Rt3 and Rt1/Rt141?

Nordic Responded that they had made a proposal "as part of the final site plan submission..." but there is no such proposal in the final site plan materials.

5. Has CMP committed in writing to have adequate capacity for Nordic's needs at all times? Nordic responded by referencing "the attached letter" from CMP.

No letter appears in the record anywhere.

6. Written statement from NAF that they will be able to engineer a way to pull water out of a free-flowing Little River. No written statement was provided other than to say that the engineering of such a system is "not unusual". The city engineer stated that "water quality could be a concern." Written commitment to let the town decide about removal of the lower dam even if NAF exercises its option to buy the dam. NAF included excerpts from the real estate agreement but there is no mention about letting the town decide the fate of the lower dam.

7. Without giving away proprietary details, what kinds of ingredients will NAF use in fish food, how much variation is there, how do variations in feed affect odors in the neighborhood, wastewater, water quality at the shoreline, total carbon budget of operation. Nordic provided no answer to how variation in feed affects odors in the wastewater, water quality, etc. The only response on odor was with regards to how the feed is stored.

8. What is the nature of the structural assessments to be done to the dams before blasting, to assess the effect of blasting? NAF states that they have structural assessment records from the BWD and a licensed contractor. A dam evaluation done by Wright/Pearce exists in the record but does not address the issue of blasting. No plan is provided other than to say that there will be a review of current conditions before blasting.

9. Would blasting damage either dam? Nordic did not answer the question but referred to their answer to item #8 above.

10. Does Nordic intend to occupy the pump house and/or allow the public to be there before a permanent solution is found for the upper dam? Nordic answered that the use of the building is optional and again referred to #8 above.

11. Is the buffer around the NAF campus sufficient to protect the quality of designated valuable bird habitat? We know habitat quality for many species depends on large undisturbed areas with minimal edges. The same amount of acreage, if in small or narrow fragments, is not adequate to support populations. Will noise, human activity, edge dwelling predators etc. leak through the buffer and lower habitat quality? Nordic responded "Addressed in Planning Board meeting on October 21, 2020." In the planning board meeting of October 21, 2020 Nordic addresses nothing in regards to this question.

Questions posed to Wayne Marshall by the planning board on October 21, 2020 and addressed on October 28, 2020:

1. Upstream has stated that air emissions from multiple aspects of the project, including the tanks themselves, fish processing etc, should have been considered as part of NAF's air emissions total. An increase in total emissions could push them into a higher class of emitter with different regulations. How much GHG/other pollutants are likely to come from these sources and why is the state not including them in the total? Will there be a more severe local air quality impact than that estimated by the state? In his response, Wayne states "Further, I am unable to determine if the DEP decision to not include emissions from other Nordic operations will or will not have a greater impact on air quality in Belfast."

2. What statement do we have from Belfast Water District about how they are preventing dam failure (with water level etc) in the meantime and how much control over water level they have in the event of increasingly common extreme rainfall, rainfall on frozen ground etc. Wayne Marshall responded "I reference the comments in the response to the Board from Ed Cotter, Nordic, regarding the Water District's ability to reduce the amount of head at the dam by use of a by-pass pipe. Also I will reach out to Keith Pooler, Supt, Water District, in advance of Wednesday night's meeting for any additional information." No additional information from Keith Pooler was provided for the record.

3. Do we have assurances in the record from a marine scientist that the proposed effluent will not cause algae build up at the local scale? Wayne Marshall responded "The main information in the record is from the DEP and the DMR. The DEP and DMR found that the proposed project will not cause a build-up of algae." In the record before the planning board there is no assurance from a marine scientist that algal build-up will not occur. In addition, the DEP states that the discharge will in fact cause degradation of water quality.

ISSUE #3 THAT IS THE SUBJECT OF THIS APPEAL

The Board invited and then relied on hearsay evidence.

- August 5, 2020. (ZOOM Meeting) Board meets to discuss the issue of groundwater. This is an interactive discussion with both Matt Reynolds, Drumlin Environmental and Mandy Olver, Olver Associates, (City experts), as well as City Attorney and Code and Planning Department staff, and involves Nordic representatives. An additional goal of the meeting was for the Board to obtain a better understanding of how the DEP is considering the issue of groundwater extraction.

The Board invited and relied on assessments and analyses of the DEP findings and decisions by various consultants, the City Attorney and the City Planner, none of whom were present at the DEP proceedings. To each of them, information received about the DEP decision making process was hearsay. When those consultants offered their opinions to the Planning Board those opinions became double hearsay. Hearsay is so unreliable that it is disallowed in court and other proceedings.

CHAPTER 90, SECTION 90-42

FINAL SITE PLAN REVIEW CRITERIA

The Board made the following specific Findings in its review of the Final Site Plan application for the Section 90-42(b) criteria:

Sec 90-42(b)(1) Pollution. The proposed development will not result in undue water or air pollution. In making this determination, consideration shall be given to:

- a. The elevation of the land above sea level and its relation to the floodplain (compliance with chapter 78, article II).**
- b. The nature of soils and subsoils and their ability to adequately support waste disposal.**
- c. The slope of the land and its effect on effluents.**
- d. The availability of streams for disposal of effluents.**
- e. The applicable state and local health and water resource rules, regulations and codes.**

The Board found that this standard is quite specific in the factors the Board is to consider in determining if a proposed development will result in undue water or air pollution. The Board reviewed the five criteria identified in Sec. 90-42(1) and made the following findings.

- a. The applicable state and local health and water resource rules, regulations and codes.**

ISSUE #4 THAT IS THE SUBJECT OF THIS APPEAL

The Nordic waste discharge to surface water will degrade the water quality in Penobscot Bay.

The DEP, on November 19, 2020, issued a MPDES and Waste Discharge License to Nordic. The DEP, in its Findings for this Permit, described why it determined that Nordic can use and manage water, including the discharge of wastewater, in accordance with State requirements. The Board reviewed the DEP MPDES Permit and accompanying Findings, including a review of this Permit by Mandy Olver, Olver Associates, and determined that the State has established appropriate conditions on Nordic's operations to manage water resources associated with the discharge of waters to Belfast Bay. The Board specifically noted that it conditioned the issuance of the City Site Plan Permit on Nordic's compliance with requirements of the MPDES Permit.

Nordic admits and DEP confirms, Nordic will discharge pollution into Penobscot Bay. The DEP/MPDES standard is not that there will be no pollution discharged into the Bay. It is that there will be the discharge of pollution into the Bay and the Government determined to allow that pollution. The city standard is different. It says the project will not result in pollution to surface waters. The Nordic application admits that the Nordic project will discharge pollution to surface waters which violates that standard, and the Board has no waiver mechanism. **Even after the State allowed Nordic to misinterpret data provided under oath and allowed a factor of two of the dilution of Nitrogen in its discharge of 7.7 million gallons a day to the bay, the application discharge of 23 mg/l of nitrogen still exceeds the 21 mg/l anti-degradation limit and compromises the SB classification of the Bay. The application must be denied.**

Beyond that, Nordic projects to comply with the state law on thermal discharge by only 0.1 degree. One should ask if compliance can possibly be maintained other than sporadically. Nordic has not provided evidence that it could meet the 21 mg/l effluent nitrogen concentration. The planning board failed to review data on effluent and pollution waste from Nordic's other plant in Fredrikstad. Evidence of Nordic's operation of its Fredrikstad facility shows that this facility produces 5 x the amount of nitrogen on the basis of kilograms of nitrogen/metric ton harvest than what is being proposed in Belfast. One might say that 21 mg/l is close to 23mg/l, but it is in fact a 9.5% reduction. Nordic has no evidence that it can meet the 23 mg/l let alone a further reduction of 9.5%.

ISSUE #5 THAT IS THE SUBJECT OF THIS APPEAL

The Minor Source Air emission permit DEP issued to Nordic is invalid due to a failure of a material predicate condition.

The DEP, on November 19, also issued a Minor Air Emissions license to Nordic for its proposed on-site generation of emergency and 'peak-shaving' power. The Planning Board noted that the City lacks specific regulations to manage power generation facilities and that the DEP has the jurisdictional authority to regulate air emissions associated with such activities and facilities. The Board determined that the DEP's issuance of a Minor Air Emissions license demonstrates that Nordic is in compliance with State requirements.

The Minor Source Air Emission permit issued to Nordic by DEP is predicated upon Nordic voluntarily limiting its annual fuel consumption to 900,000 gallons of diesel per year. Nordic has agreed with CMP that it will provide power on demand to CMP. There is no exception for exceedance of the fuel limit. Therefore, there is no limit. If CMP wants Nordic to produce power, Nordic must produce power, and the self-imposed 900,000-gallon limit is meaningless. Since there is no self-imposed limit due to Nordic's commitment to CMP, Nordic does not qualify as a Minor Source, its permit is invalid, and Nordic must reapply to DEP.

ISSUE #6 THAT IS THE SUBJECT OF THIS APPEAL

Nordic does not comply with the city requirements regarding groundwater quantity.

The Nordic project also requires a Significant Groundwater Permit from the City. The Planning Board issued this Permit to Nordic on December 22, 2020, finding that it satisfied City requirements regarding the protection of water quality and quantity standards for private wells in the area, subject to Nordic's compliance with Condi-

tions of Approval established by the Board.

Nordic's own information provided that its pumping regimen will reduce the water level in wells of nearby homeowners by 10-15 feet. In addition, test well data suggests that saltwater intrusion will also exist. Because an alternative water supply may be available, does not negate the fact that individual property owners may have contaminated ground water under their property.

ISSUE #7 THAT IS THE SUBJECT OF THIS APPEAL

Nordic failed or refused to apply for a critical permit from the Corps of Army Engineers and the DEP: An MPDES Permit for its dewatering of the dredge spoils and the deposit of that water, likely contaminated by mercury, into Penobscot Bay.

The Board also noted that it established a Condition of Approval that requires Nordic to comply with terms of all ACOE Permits that may be issued to Nordic.

In addition to complying with permits Nordic applied for and obtained, Nordic must comply with the Clean Water Act by applying for and obtaining a permit to return to Penobscot Bay the water from the dredge sludge dewatering process that Nordic proposes to occur between Northport and Searsport, generally in Belfast Bay. The sediments to be dredged are known to contain mercury deposits, residue of the Holter-Chem release into the Penobscot River that spread into Penobscot Bay. Nordic does not comply with the requirement that it obtain all of its permits or the requirement that it not degrade water quality in the Bay. . The City entered into the record mercury test data that was performed using an inappropriate method, and used this data to support its findings.)See attachment A)

Sec. 90-42(b)(3) Municipal water supply. The proposed development will not cause an unreasonable burden on an existing municipal water supply, if one is to be used.

ISSUE #8 THAT IS THE SUBJECT OF THIS APPEAL

The A. E. Hodson Report omitted or failed to disclose critical material facts that preclude use of the Municipal Goose River water supply as proposed.

The Belfast Planning Board found that the Belfast Water District has sufficient water capacity to provide Nordic the maximum amount of water identified in the Nordic application, up to 500 gpm.

Keith Pooler, Superintendent, Belfast Water District, and engineering consultants to the District, met with the Board on both September 23, 2019 and on February 26, 2020, to describe the District's operations and respond to questions from the Board regarding how the District can provide Nordic the identified amount of water from their existing two wells combined with installation of the new Talbot well located in the Goose River aquifer. A.E. Hodson, consulting engineers to the District, in a report dated February 27, 2018, identified the District's estimated sustainable pumping capacity, and how the amount of water the District regularly pumped in the 1960's and 1970's when the chicken processing plants were in full production was nearly equal to the amount of water that would now be needed to serve both Nordic and all other District customers. Further, the A.E. Hodson report identified that there would still be excess capacity that would enable the District to serve new customers if needed. Continuing, the District indicated that if there was an unanticipated shortage of water, that industrial operations, such as those proposed by Nordic, would be a low priority for service compared to residential cus-

tomers and essential services. In addition, Superintendent Pooler indicated that the revenues the District receives from the water sold to Nordic would enable the District to address currently unmet capital project needs without needing to raise current water usage fees.

The A. E. Hodson Report says that Belfast will rely on the installed but never used "Talbot Well". The report says the Talbot Well can equal almost the output of water that the other two wells currently produce. Yet, according to the Maine Health Department, the Talbot Well has not been tested and the Health Department has never issued a license for the operation of that well or the use of that well for public drinking water purposes. Further, and this is astounding, the A. E. Hodson report made no mention of the existence of the Closed Swanville Landfill and the operating Swanville Transfer Station in the same aquifer and close to the Talbot Well. Neither the Water District nor Nordic have tested the Talbot Well to determine if at full pumping operation, landfill leachate from either the old landfill or the Transfer Station will be induced into the Talbot Well and thence into the Belfast drinking water. In addition, the A. E. Hodson report does say that it believed that the Talbot Well "communicated" with one of the current Belfast supply wells meaning that if the Talbot Well becomes contaminated, one of the other two wells is likely to become contaminated also. If the Talbot Well cannot be used, there is insufficient to serve Belfast and to serve Nordic. A.E. Hodson said so. This problem is compounded if the Talbot Well pollutes one of the other wells and that well comes off line. This permit cannot be awarded until the Talbot well is tested and licensed.

During the later stages of the Board's review of Final Site Plan application, Upstream Watch submitted a Motion to the Planning Board requesting that the Board open the record to accept testimony regarding the proximity of the Talbot Well to the former Town of Swanville landfill (closed in 1994/1995), and how the Water District's use of the Talbot Well to provide adequate water for Nordic's operations could compromise water quality for all Belfast and Northport residents. The Board considered information provided by Olver Associates, City Attorney Kelly, and Wayne Marshall, Project Planner, and decided not to reopen the record to further examine the issue requested by Upstream Watch.

The Planning Board erred in denying the Upstream Motion. The truth will be revealed. If the Talbot Well cannot be used Nordic can still demand the water it was promised in its contract with the Water District and the Water District will have no way to meet Nordic's demand. This could cost the people of Belfast a lot of money and could stall out the Nordic project. It further will demonstrate, graphically, that this permit was awarded in error and Upstream and others will demand its revocation or invalidation. That is why such a critical item must be properly disclosed and resolved before any permit is issued. The ZBA must send this application back to the Planning Board until the Talbot Well issue is resolved and an adequate supply of water for the citizens of Belfast, Nordic or no Nordic, is assured.

Sec. 90-42(b)(10) Financial and technical capacity. The developer has adequate financial and technical ability to develop the project in a manner consistent with state and local performance, environmental and technical standards.

ISSUE #10 THAT IS THE SUBJECT OF THIS APPEAL

- a) **Nordic lacks the financial capacity to develop the project.**
- b) **Nordic lacks the technical capacity to develop the project.**

The Planning Board found that Nordic has demonstrated that they have adequate financial ability to develop

the project in a manner consistent with state and local performance, environmental and technical standards, subject to Nordic's compliance with Conditions of Approval established by the Planning Board for this Permit and other City Permits. Nordic has estimated that the development of both Phase 1 and Phase 2 will require an investment of about \$500 million. Nordic has stated their intent to use several methods of financing for project construction, including but not necessarily limited to, raising private equity through shares issued through the parent company, debt/borrowing, and revenues generated from the project (Phase 1 revenues to benefit Phase 2). While Nordic does not currently have specific financing in place for the project, in its application (Attachment 9) Nordic identified how it would raise needed capital and their ability to raise such capital. Nordic representatives also described their approach to project financing and responded to Board questions at the Board meeting of August 5, 2019 and February 5, 2020, the latter of which was attended by Brenda Chandler, Chief Financial Officer, Nordic. The Board conducted a specific public hearing on this issue at its meeting of August 5, 2019 and received comment from both Parties-in-Interest and the general public, and also conducted subsequent hearings at which concerns could be raised regarding Nordic's financial ability.

The Board, in its deliberations regarding financial ability, decided there were two key issues. One, how can the Board ensure that Nordic has sufficient financing prior to the start of any project construction, and two, what is an appropriate performance guarantee for the project. The Board determined that the best approach to address these concerns was to establish specific conditions of approval. Condition of Approval 35, Evidence of Financial Capacity, establishes certain requirements that Nordic must satisfy to provide evidence that they have the financial ability to first construct Phase 1, and secondly to construct Phase 2. This Condition also requires Nordic to pay City costs associated with obtaining contractual services to review Nordic's proposed method to finance the project.

Condition 36, Performance Guarantee for Project Development, in the Site Plan Permit, requires Nordic to provide an Irrevocable Letter of Credit to ensure that the City has adequate funds to complete the construction of certain infrastructure proposed by Nordic, or to restore the area in which the infrastructure is proposed to be constructed, if Nordic fails to complete construction. Condition 36 also establishes a requirement that Nordic establish a performance bond payable to the City regarding the restoration of the area impacted by construction of the intake/discharge pipes if Nordic initiates construction, but ultimately does not secure the land rights to allow installation of the referenced pipes. The Board also notes that it established an additional Performance Guarantee in the City Significant Groundwater Well Permit that requires Nordic to provide funds to the City to help make a property owner whose private well is damaged 'whole' if Nordic fails to follow-through on its obligations to do so.

The Board found that the Conditions of Approval the Board established in this Site Plan Permit provide reasonable and effective safeguards to ensure that Nordic has the financial ability to construct this project, and for the City to use funds provided by Nordic through several City required performance guarantees if Nordic is unable to complete project construction, or if problems arise from the improvements that are constructed.

A) The forgoing "finding" and "conclusions" regarding Nordic's financial Capability are wrong and violate the regulatory requirements. A demonstration of financial capacity by any of several financial vehicles enumerated in the regulations, is an application requirement. The Regulation requires:

- a letter of credit,
- Cash on deposit

Nordic produced none of these. Nordic produced a letter saying that some European group might someday consider providing financing. That is insufficient on its face. Nordic claimed that "Old family

investors” in European countries would flock to the Nordic Maine opportunity. That is insufficient under the regulations. Nordic failed to meet the regulatory requirement and the application should have been summarily denied before so much of the taxpayers’ money was wasted on playing out this set of applications for a project that cannot ever be built for want of funding. And that is why the regulatory requirement exists – so that everyone is saved the time and expense of a project that is financially still-born.

B) Demonstration of financial capability is an application requirement. The Planning Board has no authority to ignore the requirement and then allow the applicant to attempt to show financial capacity after all the permits are awarded and after the City and its citizens have expended extraordinary amounts of time and money. If the Board had such authority, the regulations would say so. The Board has no “inherent” authority. It has that authority granted it by the regulations, and no more. Were the Board given some sort of waiver authority, there would be standards by which waivers might be considered. The regulations contain no such standards. Waiver authority for showing financial capacity does not exist.

(SEE ATTACHMENTS B, C, D)

ISSUE #11 THAT IS THE SUBJECT OF THIS APPEAL

Nordic lacks the requisite Technical Ability to construct and operate the project

The Board, considered Nordic’s technical ability to construct and operate the proposed project through-out its review of the Nordic project. The Board expressed interest in engaging the services of an independent expert to consider Nordic’s technical ability and issues related to the use of RAS technology, but ultimately concluded that Nordic had provided sufficient evidence of their ability to construct and operate the proposed project. Nordic, presented information in its application (Attachment 29), regarding its Technical Ability, and Nordic representatives described such at an August 19, 2019 Board meeting. Nordic noted its three current RAS system operations and the background and quality of its staff and project/engineering consultants. The Planning Board conducted a public hearing on this issue at its meeting of August 19, 2019. The Board received comment from both Parties-in-Interest and the general public, with one of the most common concerns being the proposed size of the Belfast facility in comparison to other facilities that Nordic operates.

The Board determined that a critical issue regarding technical ability that applies to both project construction and operation will be Nordic’s ongoing ability to demonstrate compliance with all regulatory conditions of approval established by state and federal agencies and the City. To address this issue, the Board established provisions in several of its Site Plan Conditions of Approval that require Nordic to pay City costs associated with engaging third-party inspectors to monitor project construction; for example, Condition 12, Electrical Service, Condition 20, Stormwater Management, and Condition 21, Soil and Erosion Control. The Board also established Conditions of Approval in this Site Plan Permit, as well as the Significant Groundwater Permit, to require regular reporting on project operations, including but not necessarily limited to monitoring of groundwater wells, effluent discharge, and the disposal of certain solid wastes. The Board noted that the DEP has established similar provisions in its permits to require Nordic to demonstrate financial ability and to regularly monitor and report on certain construction activities and project operations.

Nordic failed to disclose that an inspection by the county governor of Oslo and Vik-

en of Nordic's Fredrikstad facility resulted in six violations of their permit. Violations included:

- Fredrikstad Seafoods AS lacks emission control
- Fredrikstad Seafoods AS lacks monitoring of recipient
- Fredrikstad Seafoods AS lacks action plan for risk-reducing measures
- Fredrikstad Seafoods AS must risk assess all conditions at its lye tank
- Fredrikstad Seafoods AS lacks routine for waste declaration
- Fredrikstad Seafoods AS lacks energy management system

(SEE ATTACHMENTS E, F)

Nordic failed to disclose their ongoing conversations with the MPUC and CMP regarding their impact on the area's power supply and the limitations of supply from CMP.

(SEE ATTACHMENTS G)

Sec. 90-42(b)(12) Groundwater. The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater or any public or private water source.

ISSUE #12 THAT IS THE SUBJECT OF THIS APPEAL

The impact on local homeowners' wells, and salt water intrusion issues enumerated in the Significant Groundwater Well Permit Appeal are incorporated herein as if fully set forth and the above Issue regarding the Goose River supply is incorporated as well.

Sec. 90-42(b)(18) Solid waste management. The proposed development will provide for adequate disposal of solid wastes. All solid waste will be disposed of at a licensed disposal facility having adequate capacity to accept the project's waste.

ISSUE #13 THAT IS THE SUBJECT OF THIS APPEAL

There is no space for storage of solid waste.

The Planning Board found that Nordic can successfully manage all types of solid wastes generated by their proposed operation, and that Nordic can maintain safe and healthful conditions. The Board conducted a public hearing on the management of solid wastes at its meeting of October 9, 2019, and deliberated on this issue at its meetings in May 2020, and during Board review of Nordic's Final Site Plan application that occurred in October - December 2020. The Board, in conducting its deliberations, particularly made note of public concerns raised regarding the collection and disposal of fish wastes. Nordic Aquafarms presented information to the Board (information in addition to that included in Attachment 21 of their application) to demonstrate that it can secure contractual services from experienced companies to safely and effectively dispose of solid wastes generated on the site, as well as potential wastes associated with typical fish die-offs and a catastrophic fish die-off.

The Board recognized that the Nordic project will routinely generate a significant amount of waste that requires off-site disposal, and that Nordic's operations could result in a significant event, such as a fish die-off that results in specific one-time waste disposal concerns. The Board determined that the best way to address waste generation and disposal activities was to establish specific Conditions of Approval that Nordic must satisfy. The Board

established the following specific Conditions in its Site Plan Permit:

- a) Condition 14. On-Site Dumpsters. Regulates the location of on-site dumpsters, how such must be screened, and the type of wastes that can be collected in such dumpsters.
- b) Condition 15. Fish Waste and Wastes Associated with Operation of a Wastewater Treatment Plant. Identifies standards for the collection and disposal of these wastes.
- c) Condition 16. Odor Management. Establishes standards regarding the regulation/management of odors, some of which may be associated with the management of waste materials.
- d) Condition 17. Hazardous Wastes and Management of Hazardous of Special Materials. Identifies standards for the handling of Special Wastes.
- e) Condition 18. Emergency Response Plan. Identifies the requirement for Nordic to prepare an emergency response plan for catastrophic events such as fish die-offs, a requirement to implement the plan if an event occurs, and to report to the Code and Planning Department regarding how Nordic managed the event.

The Board found that the Conditions of Approval it established should ensure Nordic compliance with requirements of Section 90-42(b)(18).

There is no provision for, and there is no space for, storage of solid waste in the event of an emergency, for example an ice storm or a hurricane. Normal business would stop. "Just in time" removal and transportation of solid waste would stop, perhaps for a few days. Nordic made no provision for on-site storage of several day's waste products.

Nordic claims there will be no odors from their fish rearing, fish processing or wastewater treatment facilities. Nordic did not develop an odor management plan and there has been no discussion of actual odor potential during normal or an abnormal condition. Odor cannot be managed without the proper infrastructure engineered and installed. Odor control for a wastewater treatment facility that treats millions of gallons of wastewater and its sludges, especially those with known "fishy" type emissions can cost hundreds of thousands to millions of dollars and can take months to years to design and install. They cannot be installed as a future odor management plan suggests, as it will be too late. The odors will be spreading. The proper odor management plan was not submitted for approval and therefore the permit must be returned to the applicant until such time as a formal odor management plan and the associated odor control systems are considered, designed and provided.

The evaluation, engineering and preparation of a proper odor management plan, and the design and acquisition of odor control materials and equipment can take a long time, and as a result it is impossible to approve this project with respect to odor control at this time.

Sec. 90-42(b)(20) Buffering of adjacent uses. The development will provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for the screening of service and storage areas. The buffer may be provided by distance, landscaping, fencing, changes in grade, and/or a combination of these or other techniques.

ISSUE #14 THAT IS THE SUBJECT OF THIS APPEAL

Setbacks are not maintained.

The Board, in its review of the Nordic application, found that Nordic is complying with City requirements regarding the minimum amount of bufferyard, reference Sec. 102-684c)(1) and all structure setbacks from lot

lines, reference Sec. 102-684(b)(2) established for the Route One South Business Park zoning district. The Board noted that most of the Nordic lot line that directly abuts several residential properties on Perkins Road now consists of open fields and intermittent trees, and that Nordic, in its application, is proposing to plant new trees to create a buffer as required in City Ordinances.

Nordic ignores the front yard, Route One 75-foot setback as it proposes to run its pipes directly through the setback area adjacent to Route One. Nordic's violation of the setback lines on Eckrote are covered elsewhere.

Sec. 90-42(b)(21) Noise. The development will control noise levels such that it will not create unreasonable interference with use and enjoyment of neighboring properties.

ISSUE #15 THAT IS THE SUBJECT OF THIS APPEAL

Noise

The Board found that Nordic has demonstrated the ability to successfully manage noise levels associated with the operation of the Nordic facility. The Board specifically noted that no regular operations are projected to exceed noise levels identified in the Chapter 102, Zoning, Article IX, Division 2, Environmental Standards that govern noise levels associated with any activities in the Route One South Business Park zoning district. The Board also noted that noise is an activity that is subject to DEP regulation, and that DEP noise regulations generally are stricter than the City noise standards.

The Planning Board conducted a public hearing on this issue at its meeting of October 9, 2019. An issue that was raised at the hearing was the amount of noise associated with project construction. The City typically applies its Noise standard to operational concerns for a project, and not to construction activities. The Board also made note that the City Code of Ordinances, Chapter 34, Noise and Public Conduct Ordinance, identifies that construction activities are generally exempt from the amount of noise generated between the hours of 5:00 am and 10:00 pm. Further, the Noise and Public Conduct Ordinance identifies City 'police powers' and is not a standard that is enforced through the Zoning Ordinance.

The Planning Board, based on issues identified during its review of the Nordic Preliminary Site Plan application, decided to impose Condition of Approval 19, Noise, in the Final Site Plan Permit. This Condition generally establishes stricter requirements to manage the amount of noise associated with project construction activities than are allowed pursuant to Chapter 34, City Noise and Public Conduct Ordinance. The Planning Board opted to implement standard DEP noise requirements regarding project construction and project operations. Condition 19 also identifies some exemptions to this standard. The Board Condition also allows certain construction activities that occur wholly within an enclosed building to occur outside these construction windows.

Nordic has been asked repeatedly to reveal what sound sources it will impose on the neighborhood both during construction and during operation from the Board and from DEP. These sources were never provided to either entity. What was provided was a single conceptual sound report in the original application that supposedly addressed "construction, operations, and maintenance" from stationary sources.

Condition 19.1 exempts construction noise from daylight hours. This condition is not sufficient for a project of this magnitude where there is admittedly years of construction planned, and a limit for "summer daylight hours" and/or a 5 AM to 10 PM construction window. Both of these suggest there

will be less than 8 hours of non-construction hours for neighbors to enjoy their property and sleep. Furthermore, the City has very clear construction noise limits that ensure that OSHA occupational requirements are met off-site without hearing protection, which were never addressed.

The construction portion of the original study during the preliminary application was not a sound analysis but simply a hypothetical discussion of a few random pieces of construction equipment placed on the center of the project and projected outward. There was no discussion of actual equipment and once the unsuitable soils were identified, anything originally assumed in the preliminary application for construction sound was completely superseded by this new expanded construction sound requirement that was never explored or addressed.

Condition 19.2 suggests that construction noise will be reduced to a satisfactory level by requiring Tier 2 engines. The "Tier 2" requirements are related to the degree of air pollution control equipment and are not related to limiting, monitoring, or verifying construction equipment sound. This condition, listed as a sound condition, is not related to sound.

Lastly, the preliminary sound study was not representative of the final project and was not complete. Modifications to the project during permitting added to sound impact, but they were not addressed. Stacks did not exist during the original permit application. Similarly, based upon their sound report, the wastewater treatment plant had no sound sources, ventilation systems, or odor control systems. All these things were discussed by the Applicant prior to the final permit but were never addressed or resolved by the applicant. Therefore, it was impossible for the Board to determine whether the development will create noise levels such that it will create unreasonable interference with use and enjoyment of neighboring properties.

The original sound study report was not complete or amended by the applicant when their plans changed. DEP specifically defaulted sound review to the City, and the City defaulted to the DEP in the last condition, and as a result, operational sound was never properly estimated, reviewed, verified, or approved at either the state or local level. It is impossible to reach a conclusion that one of the largest land-based fish rearing and rendering plants ever proposed anywhere in the world, along with a city sized support utilities such as water and wastewater treatment plants, and power generation will not create unreasonable interference with use and enjoyment of neighboring properties, by simply stating that the facility will comply with state requirements when the state failed to examine sound and defaulted sound considerations to the local level.

Sec. 90-42(b)(26) Hazardous waste. The applicant shall demonstrate compliance with federal and state laws and regulations when hazardous waste is generated or stored on-site.

ISSUE #16 THAT IS THE SUBJECT OF THIS APPEAL

In the absence of full disclosure by Nordic, the Planning Board cannot make this determination.

The Board found that Nordic has submitted adequate information to demonstrate that its operations will be in compliance with federal and state laws and regulations regarding the generation and storage of hazardous waste. The Board noted that Nordic's operations will not result in the generation of hazardous wastes, and that it will

properly store any cleaning supplies that could be considered a 'dangerous' (although not hazardous) product.

The Board based its Findings on discussions it conducted with Nordic representatives at public meetings. The Board also adopted Condition of Approval 17, Hazardous Wastes and Management of Hazardous or Special Wastes, in this Site Plan Permit that establishes certain requirements Nordic must comply with regarding the management of any material that could be considered hazardous.

Nordic has been asked repeatedly to reveal what fish food, what pharmaceuticals, which cleaners, it will use. There is currently no large scale alternative to feeding large fish, just prior to harvest anything but smaller fish. And since all fish contain metals such as mercury, mercury and other metals from these feed fish will be discharged into the wastewater, will not be filtered out, will enter the upper Penobscot Bay and will bioaccumulate to the detriment of all species..

The residue from these, especially fish food, will be in the wastewater and the waste solids. In addition to mercury, some commercially available fish food currently contains substances like the carcinogen Dimethylnitrosimine and Polychlorinated Biphenylsthat are bioaccumulative and toxic/hazardous.

Without knowing what fish food Nordic will use the Board could not have reached the conclusion it did.

Sec. 90-42(b)(27) Prevention or control of air pollution. No use shall be allowed which creates a substantial risk of air pollution, whether by dust, chemicals, odor or otherwise, which would pose a significant risk of harm to local populations within the city or injury to wildlife, vegetation or to property, or harm to use and enjoyment or surrounding property. It is not the intent of this provision to merely require compliance with state or federal air quality standards, but rather to enforce a standard which may be more encompassing and strict than those state and federal standards as presently constituted.

ISSUE #17 THAT IS THE SUBJECT OF THIS APPEAL

The Board ignored Nordic's air pollution obligations under SLODA.

The Planning Board noted that the City does not have specific standards to regulate air emissions. Nordic is proposing to operate on-site power generation facilities to provide both emergency power and 'peak-shaving' power. This Nordic proposal required Nordic to obtain a Minor Air Emissions Permit from the DEP, a Permit that the DEP issued on November 19, 2020.

The DEP in its Findings and accompanying Conditions on the Minor Air Emissions Permit identified why it determined that the Nordic project complies with applicable State requirements for a Minor Air Emissions Permit and the specific Conditions that Nordic's operations must satisfy. The Permit established strict limits on the amount of fuel that Nordic could use to operate its on-site generators to qualify as a Minor Emissions Permit. The Planning Board, during its review of the Nordic Final Site Plan application, reviewed and considered requirements in both the DEP draft and final Orders for the Air Emissions Permit. The Board, finding that the DEP had the regulatory authority regarding air emissions, determined that the Nordic application was consistent with requirements of Section 90-42(b)(27). The Board, in making this decision, adopted Condition of Approval 12, Electrical Service, that requires Nordic to comply with standards in the DEP Minor Air Emissions Permit, and to obtain the review and approval of the Belfast Planning Board if Nordic proposes to emit more emissions or generate more power than is permitted in the DEP Permit.

All of that notwithstanding, SLODA says, Chapter 375 an applicant must disclose all of its potential sources of air emissions so that the reasonableness of the discharges individually and collectively,

can be assessed. The Planning Board ignored the requirement. Nordic ignored the requirement. All sources of air pollution, whether they trigger Clean Air Act Air Shed criteria for permitting must still demonstrate, at the local level, that the public will not be harmed by the air emissions. The board did not require a local analysis of air pollution. The modeling performed for DEP, excluded a local impact assessment, so it is not possible for the Board to simply use that to satisfy their condition. Specifying Tier 2 engines, may reduce pollution to some extent, but whether or not that condition or even higher Tier would prevent adverse air pollution on the local level was never assessed.

Furthermore, construction dust was considered a local concern and it was not addressed. There is respirable dust from the trucks, on-road and off-road equipment, and the moving of millions of cubic feet of unstable and unsuitable soils, mixing cement or concrete. And when assessed together there will be sufficient dust that the project could exceed short-term and annual ambient air quality requirements. A general dust assessment was presented to the Board by Upstream Watch that suggested that screening thresholds were exceeded and therefore a detailed local air quality analysis was required. Nordic neither provided, nor the board requested this detailed assessment, or rebutted the PM2.5 dust air quality screening assessment, and therefore the Application must be returned for a project that could see upwards of 10 years of construction. With missing analyses of what is disclosed, the permit is not lawfully awarded.

Lastly, the air quality discussion, as presented by Nordic is not what it seems. While “peak-shaving” was presented as a way to assist CMP on days with a high demand, like the two to three weeks a year air conditioners are maxed out in the area. While those will be necessary, Nordic did not notify the board that their request for power and air emissions is being made because they have to create power. Their addition to the grid is going to cause the area to fail nearly every and all grid stress tests applied by CMP’s consultants. Furthermore, the temporary solution proposed to date, which is still not final is that Nordic provide close to 30 to 40% of its power generated back to the grid, when the grid is stressed by high demand AND outages. Outages were never discussed. And reduced power available for the facility were never discussed. Furthermore, their power demand has not been adequately provided, even with many requests by the Board, but what is clear is that their demand continues to increase and is current at least 2 to possibly 3 or more times the available power they can generate. This project was not lawfully awarded because its analysis of its potential air pollution simply could not be provided, and still cannot until the grid concerns have been properly addressed.

ISSUE #18 THAT IS THE SUBJECT OF THIS APPEAL

Smokestacks are not chimneys.

The Board, in Condition of Approval 12, also adopted a provision that requires Nordic to obtain further Board review and approval of its Site Plan Permit if Nordic proposes to construct chimneys that are greater than 70 feet in height.

The Board, in making this Finding, determined that Nordic, in its application, submitted information to address Air Emissions concerns (Attachment 31). Nordic representatives presented information to the Board on air emissions at the Board meeting of December 18, 2019, and the Board conducted a public hearing on this issue at this same meeting. The Board received public comment from Parties-in-Interest and from the general public. Mike Lannan, Environmental Tech, provided specific testimony on behalf of Upstream Watch. Public concerns

raised to the Board include but are not necessarily limited to: the height of the chimneys at the Nordic plants that will disburse emissions from the regular and emergency operation of several large generators at the Nordic facility, and the adverse impacts such emissions could have on surrounding properties and the general public.

The regulations limit the height of non-architectural features to 45 feet. Nordic proposed 8 smokestacks. Originally there were no smokestacks proposed. The original application showed rooftop vent discharges that were well below 45 feet. When for air pollution reasons Nordic raised the potential release height of the exhaust smoke, in an attempt to meet the Clean Air Act requirements, to a height that exceeded the allowed zoning height, they had to do so in a smokestack, and therefore the smokestacks are illegal – Nordic ignored the plain meaning of the words and changed a process unit, a “smokestack”, into an architectural feature a “chimney”, because the regulations potentially allow for chimneys (and other architectural features like steeples) to exceed the height for obvious architectural reasons. If so, under that theory, anyone in Belfast can build an exhaust tower as high as they might want for any purpose, anywhere in Belfast, as long as they call it a “chimney”. That is not the law. A smokestack that cannot be enclosed to look like a chimney for air quality dispersion reasons, and that will be 1.5-2 times the height of the building cannot be considered included as an architectural feature, such as a chimney. That is the opposite of an added architectural feature. The ZBA must reverse it.

Sec. 90-42(b)(29) Adequacy of waste disposal. The applicant shall clearly demonstrate to the Planning Board that all quantities and types of waste generated by the proposed use can be dealt with and disposed of while maintaining safe and healthful conditions.

Upstream Watch has identified Waste issues for appeal elsewhere in this document which it incorporates instead of repeating.

Sec. 90-42(b)(30) Additional standards for development that may substantially affect the environment. Additionally, if the proposed development meets the definition of development that may substantially affect the environment, as defined in 38 M.R.S.A. § 481 et seq., then section 484, Standards for Development, chapter 371, Definition of Terms used in the Site Location of Development Law and Regulations, chapter 372, Policies and procedures, chapter 373, Financial Capacity Standard, chapter 374, Traffic Movement Standard, chapter 375, No Adverse Environmental Effect Standard, chapter 376, Soil Types Standard, and chapter 377, Review of Roads and/or Major Development, and the provisions of section 90-17 shall apply.

Upstream Watch has elsewhere identified issues concerning unsuitable soils, financial capacity, and Nordic’s lack of permits and will not restate those issues here.

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October 8, 2020

To: John Krueger

From: Ralph Turner, PhD, Cobble Hill, British Columbia CANADA

Subject: Comments on report by Nordic Aquafarms Inc supporting their application for land-based fish farm on Penobscot Bay, Maine

As per your request here are my comments on the subject report. I will focus mainly on the sampling and analytical components of the report. My area of expertise is mercury in all environmental media. My formal training has been in geology (Boston University, 1966) and chemical oceanography (Florida State University, MS 1970, PhD 1974). I was employed by Oak Ridge National Laboratory (ORNL) for 22 years where I conducted extensive research and development studies on mercury in the environment. In 1997 I left ORNL for a year long sabbatical appointment at EPA's Gulf Breeze, Florida research facility to explore use of microbial bioreporter technology for mercury and to edit a book (published 1999) entitled "Mercury Contaminated Sites: Characterization, Risk Assessment and Remediation". Following that appointment, I accepted a job at Frontier Geosciences in Seattle, Washington where I managed their mercury laboratory as well as conducted mercury-related investigations for industry and mining companies in both Canada and the United States. One of my clients at the time invited me to move to Canada to help clean-up a mercury-contaminated site in British Columbia. I formed a Canadian corporation, RT Geosciences Inc, to facilitate this effort which included management of the plant laboratory which supported all aspects of the site characterization and risk assessment. I continue to monitor the recovery of this site and hold contracts as a Subject Matter Expert for several other sites. In 2004 I was contracted to investigate mercury losses from the mercury-cell chloralkali plant on the Penobscot River and eventually joined the Penobscot Mercury Study. My contribution to that effort was two-fold: (1) assessment of current and historical releases of mercury from the plant and (2) assessment of tidal movement of mercury in Mendall Marsh. Both efforts resulted in peer-reviewed publications and added to the more than 50 other such mercury-related publications in my curricula vita.

Comments

Spatial coverage of sediment sampling: Adequate

Depth resolution of subsampling: The use of depth-integrated composites, while acceptable for application to cores from most areas, it would have been useful to run a few cores at depth intervals (e.g., 1-2 cm or even 5 cm) similar to those used by the PRMS to allow better comparison between the two studies. Often sedimentation rates can vary widely in tidally influenced depositional zones such that a given compositing interval represents very different period of deposition.

Sediment digestion method: Complete recovery of mercury in sediments requires the use of aqua regia to assure dissolution of mercury in the sulfide form (Jacobs and Keeney 1974). The study report gives EPA Method 7471 in one place as the analytical method applied but also states that EPA Method 3050B was used for digestion of sediment and Method 245.7 for analysis. Method 3050B does not employ aqua regia but uses a mixture of nitric acid and hydrogen peroxide to digest sediment and is specifically not approved for analysis of mercury because mercury is not recovered quantitatively. This reviewer suspects the analytical laboratory wished to conduct only one digestion to obtain solutions for both mercury (by atomic absorption spectroscopy, AAS) and other metals (by ICP-MS). Thus they followed

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only the analytical portion of Method 7471 (which is very similar to Method 245.7 in using AAS). The high chloride content of aqua regia interferes with analysis by ICP-MS which is why alternate digestion methods are applied when analyzing elements other than mercury.

Quality Assurance: According to one appendix (supporting document) to the Nordic report, standard/certified reference materials were analyzed to verify quantitative recovery of target analytes, but Tables II-1 and Table II-5 indicate this was not actually performed. This reviewer is aware that CRMs for mercury in sediment are now difficult to acquire, at least in North America. Formerly NIST offered several such CRMs for mercury in river sediment but these seem no longer available. ERM-CC580 is a certified reference material for estuarine sediment and available from European vendor. Demonstration that mercury could be recovered quantitatively from Penobscot Bay sediment was critical to having any confidence in the Nordic Aquafarms data but seems not to have been so recognized and carried out.

Citations

Jacobs, L.W. and D.R. Keeney. 1974. Aqua regia for quantitative recovery of mercuric sulfide from sediments. *Environ. Sci. Technol.*, **8**(3):267-268

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Sec. 90-42(b)(10) Financial and technical capacity. The developer has adequate financial and technical ability to develop the project in a manner consistent with state and local performance, environmental and technical standards.

Nordic has not provided sufficient evidence of financial capacity to enable the Planning Board to determine that they are able to develop this project in a satisfactory manner.

“Nordic has stated that construction of the project will cost \$500 million.” (Planning Board Adopted Findings of Fact dated July 15, 2020 (FOF), P. 23)
Nordic has not provided any credible evidence that this estimate is realistic. The chart of “Estimated Costs” (Application Attachment 9 (Att. 9), P. 1, 9.1) is cursory at best, with broad, poorly-defined categories that include no source information and no verifiable numbers, and has not been confirmed by any independent source. The Planning Board cannot be confident that this is a reliable estimate of the cost of this project.

Nordic has not identified “how it would raise needed capital and their ability to raise such capital.” (FOF P.23)

It has simply stated that “NAF, AS expects further investment from our current shareholder base as well as another offering directed at institutional investors for the Belfast project,” and that the company has previously raised \$63 million through share issues (Att.9, P. 1, Sec.9.2) to fund establishment of the company to date. “Our current shareholder base” is six family- and individually-owned Norwegian companies, and four additional shareholders. (Att.9, App. 9-A, P.5-6). Nordic is proposing to raise \$500 million, nearly 8 times the amount they have raised to date, possibly concurrently with raising \$500 million for a project in California. A letter from financial institutions (Carnegie Bank and Pareto Securities (Att.9, P. 10, App.9-B)) that are related to Nordic through its shareholders and are financial beneficiaries of Nordic share offerings is not convincing evidence of ability to raise capital through stock issues. There is no evidence of whether or how much these eight family businesses might invest in the future targeted to the Belfast project, or what “institutional investors” might be interested.

Nordic proposes debt and cash flow from operations as sources of construction funding (Att.9, P.1-2).

It has not, however, provided the name or demonstration of interest from any institution that provides loans (EKF, a credit guarantee agency, does not), or any projected financial statements or other credible evidence that cash flow will be available.

A key issue of concern to the Board is to “ensure that Nordic has sufficient financing prior to the start of any project construction.” (FOF P.23)

Central to this determination is a reliable cost estimate. A meaningful cost estimate should include verifiable data in usable detail from identified, reliable sources, reviewed by an independent financial professional. This is not a burdensome requirement since a reliable cost estimate is essential to responsible internal company decision making.

“The Board determined that the best approach to address these concerns was to establish specific conditions of approval.” (FOF P.23-24).

Any cost estimates required to support conditions formulated by the Planning Board should specify reporting criteria that ensure reliable dollar amounts that can be verified in a form that is acceptable under professional accounting standards.

Any permit conditions requiring demonstration of funding before the start of construction should apply to an appropriate fraction of the project. Nordic has stated on several occasions that the entire 2-phase project is essential to economic viability. (Examples: " In order to be economically viable, the Belfast location needs an ultimate 33,000 metric tons capacity potential." (P. 13) "The one production unit layout is not financially viable and does not warrant the construction of the facility. The construction costs and production cost per unit produced would result in a facility that would operate at a loss for years." (P.19, 2.5.3) (BEP Prefiled Testimony, E. Ransom)) If Nordic demonstrates the ability to build only phase 1, it is likely that the project would fail if subsequent funding is not available due to market conditions, obsolete technology, company difficulties here or elsewhere, or many other factors.

“The Board chose not to require a ‘decommissioning’ performance guarantee as requested by some at the public hearing.” (FOF P. 24)

The City will be at risk if Nordic is not required to provide a performance guarantee. A partially-completed, or complete and abandoned, facility would not readily lend itself to repurposing. The facility is very specifically designed to produce fish. It is not suitable for any other purpose. It is not likely to be an easy task for the City to find a new and desirable owner who is able to meet environmental standards to complete or rejuvenate such a facility. Notably, construction will begin, at the outset, with excavation, blasting, and backfilling of sensitive intertidal and subtidal habitats for placement of intake and discharge pipes, rerouting of Rt. 1 including blasting and “dewatering” of nearby wetlands, clearing of the forested areas, and excavation of soils and bedrock to depths of 20’ or more. This is indicative of the conditions the City would be faced with if the project were abandoned at any point.

It is notable that, despite requirements in the Maine DEP’s SLODA application, Nordic has chosen not to provide any financial statements, budgets, or financial plans for this half-billion-dollar project. These requirements are relevant to the Planning Board as well, especially since Sec. 90-42(b)(30), Additional Standards, specifically states that the SLODA chapter 373 financial standards apply to this project that may substantially affect the environment. These are widely-accepted financial documents that are typically used by internal management as well as potential investors (including Belfast, which is investing its irreplaceable natural

resources and quality of life) to verify the expectations of company management, assess viability and potential, plan cash management, and predict and track performance. Nordic should have these documents available in-house, as well as statements of the company's financial performance history, including Fredrikstad Seafoods, a facility with similarities to that proposed for Belfast. In light of Nordic's failure to provide any financial statements or calculations, the only indication of Nordic's financial performance or the potential performance of a new facility is publicly-available data from the internet. Nordic suggested the website <https://www.proff.no/> as a source of shareholder information (Att. 9, P.6, App. 9-A). This site includes financial performance data for Nordic Aquafarms, AS and Fredrikstad Seafoods. In light of Nordic's failure to proactively provide evidence of anticipated financial performance, substantial financial losses in recent years for both the subsidiary and the parent company indicate a need for detailed and credible evidence that the Belfast facility has the potential to be a successful venture and that Nordic will be able to meet all of its financial obligations responsibly.

Nordic, Inc, the Delaware corporation that is a wholly-owned subsidiary of the Norwegian company Nordic, AS, is the applicant for this permit as well as the permit for the proposed California plant. A Maine LLC has been mentioned as the possible business structure for the Belfast facility. Apparently, there will be no stock issued below the level of the parent organization. Nordic, A.S. will be the sole owner of the U.S. resident companies. It is critical that the Planning Board fully understand Nordic's entire corporate structure and frame any financial requirements to guarantee that funds are available and that financial responsibility rests with the appropriate company within the corporate framework.

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To the Belfast Planning Board

My name is Martha Reeve. I am a retired Certified Public Accountant. I had a practice on Front Street in Belfast from 2002 to 2010, and previously worked for Adams & Valley CPAs in Bangor. I am the treasurer of Upstream Watch, but I want to be clear that I am submitting this independently.

The financial capacity of Nordic Aquafarms, Inc., and Nordic Aquafarms AS is of paramount importance to Belfast and the surrounding area. Inability to complete the project or unforeseen accidents, environmental or other, could cost Belfast dearly, and compromise the environmental integrity and quality of life in the region.

I would like to comment on the materials that Nordic supplied to the DEP in section 03 – Financial Capacity in their SLODA (Site Location of Development) permit application, dated 5/19/2019, and testimony submitted by Brenda Chandler, dated 12/20/2019.

Many of the financial assessments and projections provided by Nordic quote Carnegie Bank and Pareto Bank as authorities. As disclosed in the second paragraph of Appendix 3-B of SLODA section 03 (an endorsement from the two banks), these banks have managed equity placements for Nordic in the past. While, as they note, this would have afforded them insight into Nordic's financial situation, it also implies that they would benefit from additional business with Nordic if permits are granted.

Furthermore, one of Nordic's primary shareholders has a substantial business relationship with Pareto Bank that is not disclosed in these documents. Petter W. Borg was a founder and past CEO of a Pareto Group subsidiary, and currently serves as chairman of Pareto Forsikringsmegling (Insurance Brokerage, according to Google Translate) and as chairman of the nomination committee of Pareto Bank, ASA.¹

As a former CPA, I am dismayed to realize that the only firms that have supplied information about Nordic's ongoing financial capacity are not financially independent of Nordic, creating a conflict of interest. This may seem like professional nit-picking, but independence and objectivity are primary tenets of ethics for both the American Institute of Certified Public Accountants and the International Code of Ethics for Professional Accountants (and many other organizations) for good reason; they are essential to provide a mindset that guarantees unbiased thought and reporting. In the absence of independence, the relationship between the preparer and the client should be clearly disclosed. I consider the complete lack of disclosure of Mr. Borg's relationship to Pareto Bank to be unprofessional and discourteous to you, the third-party user.

Please remember as you review these financial submissions that the firms providing assessments of Nordic Aquafarms both have financial ties to Nordic, a notable conflict of interest since they would benefit financially from the permitting of this project. This fact is especially salient since disclosure of the relationships has not been given due respect and transparency.

1. https://www.ferd.no/en/about_ferd/board_and_administration/board_of_directors. Ferd Board of Directors. There is no date on this website. The information might be out-of-date, but recent severance of these ties would not prevent lack of independence.

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I also urge you to read and consider the significance of the footnotes and disclosures that have been provided, especially the "endorsement" letter from Carnegie and Pareto Banks:

This note has been prepared by Carnegie and Pareto for the sole use by the recipient in the view of providing comfort regarding the company's ability to secure financing for the expansion plan in Belfast, Maine. This note contains only a preliminary discussion of the project and necessitates further investigation. The information herein is based on public available information and information from NAF. Although the information is believed to be accurate, no representation or warranty is made by Carnegie or Pareto regarding the accuracy and completeness of the information, estimates, statements and assumptions contained herein and no liability of any form relating to the contents of this document shall be assumed by Carnegie or Pareto.

The red highlights are mine. It appears that the banks did no independent research or assurance, but primarily "endorsed" the information they were given by Nordic. They do not assume any responsibility for the accuracy of the document and encourage further investigation.

On to the nuts and bolts.

Nordic proposes three types of financing for this project; equity, debt, and cash flow from operations. It is notable that Nordic plans to be funding construction of a large facility in California concurrently with the Belfast project.

Equity: Nordic's ability to access private equity is extensively discussed in the application materials, including a list of shareholders who appear to be well recognized in Norway. Nordic has provided a properly-prepared, independent report to document their history of raising capital by issuing securities. Presumably, with all documented shareholders but one residing in Norway, most profits resulting from this project will be enjoyed across the Atlantic. BDO Bank documents the raising of over \$63 million via stock issues through 2018 to fund all of Nordic's ventures.

Equity is projected to provide 40% of the building costs of the project (Brenda Chandler testimony), approximately \$200 million.

Debt: Access to funds through debt is minimally verified and appears to rely on a Danish government funding scheme that is unfamiliar to me. Application materials simply include an unsupported statement in several documents (SLODA section 3 text and appendix 3-A, and Brenda Chandler testimony) that Nordic is "in dialog" with unnamed Norwegian and US banks, and implies that the banks have expressed "interest."

The only documentation provided for borrowing capacity is a "letter of interest" from EKF noting the scope of their business and that "Nordic Aquafarms DK ApS" falls within their purview. They will not analyze the project until a formal request is made. I am not familiar with EKF or its methodology, but it appears to offer loan guarantees to assure investors that they will receive compensation for products exported from Denmark even if the recipient is unable to or refuses to pay. I believe this service would make financing of certain loans for equipment produced in Denmark for the Maine facility more attractive to potential lenders, but would not be an actual source of funds. Without an adequate explanation of how EKF operates and how it fits into Nordic's financing plans, it is impossible to evaluate its potential to enhance overall funding for this project.

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Nordic has supplied little insight into the availability, cost, or role of debt funding. Who are perspective lenders with documented interest and capacity? What is the structure of the debt component, such as specific purpose within the overall funding scheme, potential collateral and proposed timing? What is the role of EKF? No local builder would lay a house foundation with this level of loan disclosure, and I consider it inadequate to demonstrate the feasibility of a \$500 million project.

Debt is projected to provide 50% of the building costs of the project (Brenda Chandler testimony), approximately \$250 million.

Cash Flow: Cash flow is cited in the SLODA application and prefiled testimony as a source of funds for construction costs, but there is virtually no documentation of projected cash flow from operations, and indeed no indication that this business venture has the potential to be profitable. With no projected financial statements provided, cash flow is left unaddressed. There is no attempt to demonstrate that positive cash flow from phase 1 will be available to fund phase 2.

Cash Flow is projected to provide 10% of the building costs of the project (Brenda Chandler testimony), approximately \$50 million.

Long-Term profitability and funding of early operations are also important:

Profitability: Although an enterprise can generate positive cash flow temporarily while operating at a loss, available cash flow for project funding implies profitability. Operating profit is also key to long-term viability and responsible management of the facility.

The only allusion to potential profitability is in the letter from Carnegie and Pareto Banks, Appendix 3-B, primarily in the form of two charts that were apparently prepared by the banks. Virtually no explanation is provided of the data these charts. What salmon populations and business models are included in "Atlantic Salmon, Price, Cost & Profitability?" There is no indication whether wild caught salmon are included, or what countries are included in the analysis. There are currently no profitable salmon-producing RAS operations in the world, so this data does not appear relevant to Nordic's proposed facility. The chart "Composition of Production Cost" includes no description of the fish-raising practices that generated this data, but, with the lack of operational RAS salmon-raising facilities, it is probably not particularly applicable. No guidance is provided on how to interpret these charts, or how they relate to the current project. Given the lack of supporting information, the charts are meaningless with respect to Nordic's potential profitability.

The only information I have been able to locate that reflects the financial standing of Nordic Aquafarms AS is from the web site www.proff.no that is noted in prefiled direct testimony, Nordic Exhibit 2, as a source of shareholder information. This appears to be an independent Scandinavian reporting service. According to this site, the 2018 operating "result" of Nordic Aquafarms AS (with 8 employees) was a loss of "10,533 'NOK." I am unsure of the significance of the apostrophe before Norwegian Krone, but would guess that it might signify thousands. This would translate to a loss of over \$1,180,000 (according to an internet currency converter provided by Google using data from Morningstar).

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The Nordic facility that bears most similarity to the Belfast project is Fredrikstad Seafoods, an RAS facility in Denmark that began construction in 2017. According to the web site www.proff.no, the 2018 operating "result" of Fredrikstad Seafoods AS (with 12 employees) was a loss of 9,960 'NOK, which, given the above assumptions would translate to a loss of over \$1,120,000.

Nordic has supplied no documentation indicating that the Belfast facility might generate a profit, and certainly no support for availability of cash flow from phase one to fund the construction of phase 2.

Early Operations: Working capital to operate the plant before generating marketable product will come from "a credit facility" according to prefiled testimony, Nordic Exhibit 2. There is no description of this arrangement. What is the source of funds? What function does the facility serve and what is its business structure? The pre-production phase is not included in the chart of estimated development costs, and no estimate of this additional cost is provided.

The City of Belfast commissioned Deloitte AS to assess the viability of Nordic Aquafarm's proposed facility. Their July, 2018, report states "we believe that Nordic Aquafarms should be able to get financing for their initiatives given that they are able to present a good and realistic business case to their potential investors." Belfast has thus been advised that Nordic must meet this primary standard to establish confidence that their project will attract investors and be able to meet its financial responsibilities.

It is inherently difficult to assess the financial and business capability of a foreign company operating in a different language, under unfamiliar finance and accounting rules and customs, on a far larger scale than most of us are accustomed to. The materials provided by Nordic lack transparency, lack independent oversight, and include no financial projections. Please consider carefully whether this level of financial and business information supplied by Nordic is commensurate with the responsibility and risk of sanctioning a \$500 million biological production facility in our community.

(Shareholder's stock value is increasing while the company is losing money)

D



FREDRIKSTAD SEAFOODS AS
c/o Øra Industripark AS, Øraveien 2
1630 Gamle Fredrikstad

Saksbehandler:
Anette Strømme

Inspeksjonsrapport

Inspeksjon ved Fredrikstad Seafoods AS - Landbasert lakseoppdrett

Kontrollnummer: 2019.045.I.FMOV

Kontaktpersoner ved inspeksjonen:

Fra virksomheten:
Roger Fredriksen

Fra Fylkesmannen i Oslo og Viken:
Anette Strømme

Andre deltagere fra virksomheten:
Simen Haaland

Andre deltagere fra Fylkesmannen i Oslo og Viken:
Marte Røsnes

Resultater fra inspeksjonen

Denne rapporten omhandler resultatet fra inspeksjon ved Fredrikstad Seafoods AS - Landbasert lakseoppdrett (Fredrikstad Seafoods AS) den 16.10.2019. Rapporten er å anse som endelig dersom vi ikke får tilbakemelding om faktiske feil innen to uker etter at rapporten er mottatt.

Fylkesmannen i Oslo og Viken avdekket 6 avvik og ga 2 anmerkninger under inspeksjonen.

Avvik:

Fredrikstad Seafoods AS mangler utslippskontroll
Fredrikstad Seafoods AS mangler overvåking av resipient
Fredrikstad Seafoods AS mangler handlingsplan for risikoreducerende tiltak
Fredrikstad Seafoods AS må risikovurdere alle forhold ved sin lut-tank
Fredrikstad Seafoods AS mangler rutine for avfallsdeklarering
Fredrikstad Seafoods AS mangler energistyringsystem

Anmerkninger:

Fredrikstad Seafoods AS sitt avvikssystem kan forbedres
Fredrikstad Seafoods AS sine varslingsrutiner kan forbedres

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Avvik og anmerkninger er nærmere beskrevet fra side 4 og utover i rapporten.

Oppfølgingen etter inspeksjonen er nærmere beskrevet på side 3.

Elektronisk dokumentert godkjenning, uten underskrift

| | | |
|------------------|----------------|----------------------|
| 24. oktober 2019 | Anette Strømme | Hilde Sundt Skålevåg |
| dato | kontrollør | seksjonssjef |

Fylkesmannen i Oslo og Viken

Kopi av rapporten sendes til:

- Fredrikstad kommune
- Nordic Aquafarms AS

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1. Informasjon om den kontrollerte virksomheten

Ansvarlig enhet

| | |
|---|---------------------------|
| Navn: FREDRIKSTAD SEAFOODS AS | |
| Organisasjonsnr.: 913245873 | Eies av: 913235967 |
| Bransjenr. (NACE-kode): 03.211 - Produksjon av matfisk, bløtdyr, krepsdyr og pigghuder i hav- og kystbasert akvakultur | |

Kontrollert enhet

| | |
|---|---------------------------------|
| Navn: Fredrikstad Seafoods AS - Landbasert lakseoppdrett | Anleggsnr.: 0106.0174.04 |
| Kommune: Fredrikstad | Fylke: Østfold |
| Anleggsaktivitet: Laksefiskproduksjon på land | |
| Tillatelse gitt: 30.10.2015 | Sist endret: |

2. Bakgrunn for inspeksjonen

Inspeksjonen ble gjennomført for å kontrollere om gjeldende krav fastsatt i eller i medhold av forurensningsloven overholdes. Inspeksjonen er en del av Fylkesmannens risikobaserte industritilsyn for i år.

Tilsynet ble gjennomført i medhold av forurensningsloven § 48.

Inspeksjonstema

- Tillatelse datert 30.10.2015 (tillatelse nr: 2015.0720.T)
- Internkontroll
- Prosess og renseutstyr
- Utslipp til vann
- Utslipp til luft
- Avfall
- Kjemikalier

Rapporten omhandler avvik og anmerkninger som ble avdekket under inspeksjonen og gir ingen fullstendig tilstandsvurdering av virksomhetens miljøarbeid eller miljøstatus.

Definisjoner

Avvik: Manglende etterlevelse av krav fastsatt i eller i medhold av lov.

Anmerkning: Et forhold som tilsynsetatene mener er nødvendig å påpeke for å ivareta ytre miljø, men som ikke omfattes av definisjonen for avvik.

Andre forhold: Saker som framkom under inspeksjonen og som det kan være nyttig for virksomheten og saksbehandlere å kjenne til. Her kan også inngå kommentarer til tema som ble tatt opp under inspeksjonen, men der det ikke ble gitt avvik eller anmerkninger.

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3. Oppfølging etter inspeksjonen

Fredrikstad Seafoods AS plikter snarest å rette opp de avvik som er beskrevet i denne rapporten. For at Fylkesmannen skal kunne avslutte saken, må Fredrikstad Seafoods AS innen 31. januar 2020 sende en skriftlig redegjørelse som viser hvordan avvik er rettet.

Vi ber om at dere stiler svarbrevet eller e-post (fmovpost@fylkesmannen.no) til Fylkesmannen i Oslo og Viken v/Anette Strømme.

4. Vedtak om gebyr

Vi viser til varsel og informasjon om gebyrplikt som ble gitt til virksomheten den 20. september 2019. Virksomheter skal betale gebyr for kontroll utført av Fylkesmannen i samsvar med § 39-3 i forurensningsforskriften. Gebyret skal dekke kostnader med forberedelser, gjennomføring og oppfølging av kontrollen. Gebyrsatser for kontroll av virksomheter etter forurensningsloven er fastsatt i forurensningsforskriften §§ 39-7 og 39-8.

På bakgrunn av medgått og forventet ressursbruk vil Fredrikstad Seafoods AS bli ilagt et gebyr på kr 26 300,- for inspeksjonen, jf. forurensningsforskriften §§ 39-7 og 39-8. Dette tilsvarer gebyrsats 2 for tilsyn av inntil en dags varighet. Virksomheten vil få tilsendt en faktura fra Miljødirektoratet for innbetaling til statskassen. Vi viser forøvrig til forurensningsforskriftens kapittel 39 for ytterligere informasjon om innkreving av gebyr til statskassen.

Klageadgang

Vedtaket om gebyr kan påklages til Miljødirektoratet, jf. § 28 i forvaltningsloven. Eventuell klage bør være skriftlig begrunnet og adressert til Miljødirektoratet, men sendes via Fylkesmannen i Oslo og Viken. Fylkesmannen vil vurdere endring av vedtaket eller sende saken videre til Miljødirektoratet for endelig vedtak. En eventuell klage vil ikke få oppsettende virkning, og gebyret som er fastsett ovenfor må betales inn. Dersom Miljødirektoratet tar klagen til følge, vil for mye innbetalt beløp bli refundert.

5. Innsyn

Denne rapporten vil være tilgjengelig for offentligheten via postjournalen til Fylkesmannen i Oslo og Viken (jf. offentleglova).

6. Avvik

Vi fant følgende avvik under inspeksjonen:

Avvik 1

Fredrikstad Seafoods AS mangler utslippskontroll

Avvik fra:

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Tillatelsen etter forurensningsloven til drift av landbasert akvakulturanlegg datert 30.10.2015 (tillatelsen) punkt 11 *Utslippskontroll og rapportering til forurensningsmyndigheten.*

Kommentarer:

Tillatelsen krevet at Fredrikstad Seafoods AS skal ha utslippskontroll. Virksomheten skal gjennomføre målinger av utslipp til luft og vann. Målinger omfatter volumstrømsmåling, prøvetaking, analyse og beregning. Måleprogrammet skal inngå i virksomhetens dokumenterte internkontroll.

Målinger skal utføres slik at de blir representative for virksomhetens faktiske utslipp og skal som et minimum omfatte:

- Komponenter som er uttrykkelig regulert gjennom grenseverdier i tillatelsen eller forskrifter.
- Andre komponenter som er omfattet av rapporteringsplikten i henhold til Miljødirektoratets veileder til virksomhetenes egenkontrollrapportering

Fredrikstad Seafoods AS måleprogram for sine utslipp er mangelfullt. Resultatene fra målinger av utløpsvann blir ikke beregnet og virksomheten mangler oversikt over sitt påslipp til kommunalt spillvannsnett.

Fredrikstad Seafoods AS tar ikke målinger av slam som de slipper på kommunalt spillvannsnett. Fredrikstad Seafoods AS har en påslippsavtale med Fredrikstad kommune og slammet går til Frevar avløpsrensaneanlegg på Øra. Ettersom virksomheten ikke tar prøver av slammet, vet de dermed heller ikke om de overholder påslippsavtalen med Fredrikstad kommune.

Avvik 2

Fredrikstad Seafoods AS mangler overvåking av resipient

Avvik fra:

Tillatelsen punkt 12 *Overvåking av resipient med rapportering til forurensningsmyndigheten.*

Kommentarer:

Tillatelsen setter krav om at Fredrikstad Seafoods AS skal utføre regelmessige undersøkelser og overvåking av Glomma. Overvåkingen kan utføres i egen regi eller i samarbeid med andre som utfører overvåking i samme område.

Virksomheten har ikke en rutine/plan for overvåking etter vannforskriften i Glomma og har ikke tatt prøver i resipienten.

Resultatene av overvåkingen skal legges inn i Vannmiljødatabasen. Alle prøvetakingsresultater i resipienten skal legges inn i fagbasen Vannmiljø for å bidra til økt informasjon om miljøtilstanden i resipienten. Et godt kunnskapsgrunnlag er viktig for videre arbeid med vannforvaltning og oppfølging av vannforskriften.

Fylkesmannen kan ved behov bidra til å opprette nye lokaliteter i Vannmiljø for de aktuelle prøvepunktene. Laboratorium som benyttes kan legge analyseresultatene direkte inn i skjema som deretter importeres til Vannmiljø. Importskjemaet som skal benyttes til innlegging av data, kan lastes ned fra Vannmiljø.

Avvik 3

Fredrikstad Seafoods AS mangler handlingsplan for risikoreducerende tiltak

Avvik fra:

Tillatelsen punkt 10.2 *Forebyggende tiltak*.

Forskrift om systematisk helse, miljø- og sikkerhetsarbeid i virksomheter (Internkontrollforskriften) § 5 punkt 6 og 8.

Kommentarer:

Tillatelsen og internkontrollforskriften krever at det skal utarbeides en miljørisikovurdering for å kartlegge farer og problemer og på denne bakgrunn vurdere risiko. På bakgrunn av miljørisikoanalysen skal det utarbeides en handlingsplan med tiltak som reduserer risikoforholdene med fastsatte frister for gjennomføring, samt hvem som er ansvarlig for å gjennomføre risikoreducerende tiltak. Dette skal være en del av virksomhetens internkontroll og skal revideres jevnlig for å sikre at internkontrollen, herunder miljørisikovurdering og handlingsplan, fungerer som forutsatt.

Fredrikstad Seafoods AS har utarbeidet en miljørisikovurdering og har flere risikoreducerende tiltak, men mangler en samlet handlingsplan.

Avvik 4

Fredrikstad Seafoods AS må risikovurdere alle forhold ved sin lut-tank

Avvik fra:

Forskrift om begrenning av forurensning (forurensningsforskriften) kapittel 18 Tanklagring av forlige kjemikalier og farlig avfall (Tonklagringsforskriften) § 18-4 Miljørisiko

Kommentarer:

Tanklagringsforskriften krever at miljørisikoanalysen skal omfatte alle forhold ved tanklagring, herunder tanken, barriere, tilknyttet rør og utstyr med mer. Miljørisikovurderingen skal også omfatte en vurdering av sårbarheten til miljøet som kan bli berørt av forurensning fra tanklagringen.

Fredrikstad Seafoods AS har en 15 m³ tank med lut. Virksomheten har risikovurdering for fylling av lut, men mangler risikovurdering av alle andre forhold ved tanklagringen

Avvik 5

Fredrikstad Seafoods AS mangler rutine for avfallsdeklarerer

Avvik fra:

Tillatelsen punkt 9 *Avfall og slam*.

Forskrift om gjenvinning og behandling av avfall (avfallsforskriften) kapittel 11 *Farlig avfall*, § 11-8 *Leveringsplikt* og § 11-12 *Virksomhetenes deklarasjonsplikt om avfallets innhold*.

Internkontrollforskriften § 5 2. ledd punkt 7.

Kommentarer:

Fra Fredrikstad Seafoods AS sitt anlegg oppstår det farlig avfall som for eksempel spillolje, oljeforurenset materiale og kjemikalier. Farlig avfall ble oppbevart i merkede beholdere i lukket container. Virksomhetens rutine for farlig avfall er ikke oppdatert når det gjelder lagring, elektronisk deklarerer og levering av farlig avfall.

Det farlige avfallet skal leveres til lovlig mottak minst 1 gang pr år og deklarerer i avfallseklarerer.no ved levering. Plikten inntreer når den totale mengden overstiger 1 kg.

Avvik 6

Fredrikstad Seafoods AS mangler energistyringssystem

Avvik fra:

Tillatelsen punkt 8.1 *Energistyringssystem*

Kommentarer:

Tillatelsen krever at virksomheten skal ha et system for kontinuerlig vurdering av tiltak som kan iverksettes for å oppnå en mest mulig energieffektiv produksjon i anleggene. Energistyringssystemet skal være skriftlig og inngå i bedriftens internkontroll.

Virksomheten kunne ikke under tilsynet dokumenterer at de har et energistyringssystem.

7. Anmerkninger

Følgende forhold ble anmerket under inspeksjonen:

Anmerkning 1

Fredrikstad Seafoods AS sitt avvikssystem kan forbedres

Kommentarer:

Fredrikstad Seafoods AS har et avvikssystem. Definisjon av hva et avvik er, samt skriftlig rutine for avvikshåndtering kan forbedres. Hendelser som for eksempel naboklager på støy blir ikke fanget opp i dagens avvikshåndtering.

Oppfølging av avvik kan forbedres ved at det settes opp ansvarlige for lukking av hvert avvik.

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Anmerkning 2

Fredrikstad Seafoods AS sine varslingsrutiner kan forbedres

Kommentarer:

Fredrikstad Seafoods AS har ikke inkludert varsling av Fredrikstad kommune ved ekstraordinære påslipp til kommunalt spillvannsnett som går til Frevar avløpsanlegg på Øra.

8. Andre forhold

Fredrikstad Seafood AS startet opp produksjon i mai 2019. Produksjonen var i oppstartsfasen med 90 tonn total biomasse under tilsynet. Anlegget er prosjektert til 2400 tonn biomasse per år, fordelt på to moduler.

Det planlegges en mulig utvidelse av anlegget med økt biomasse og eget slakteri. En oppdatert søknad med faktiske forhold må sendes Fylkesmannen i Oslo og Viken før anlegget utvider eller ved oppstart av slakteri/smoltanlegg.

9. Dokumentunderlag

Lovgrunnlaget for inspeksjonen var:

- Lov om vern mot forurensninger og om avfall (forurensningsloven) med underliggende forskrifter
- Forskrift om begrensnig av forurensning (forurensningsforskriften)
- Forskrift om gjenvinning og behandling av avfall (avfallsforskriften)
- Forskrift om systematisk helse-, miljø- og sikkerhetsarbeid i virksomheter (internkontrollforskriften)
- Tillatelse til virksomhet etter forurensningsloven fra Fylkesmannen datert 30.10.2015 (tillatelse nr: 2015.0720.T)

10. Informasjon til virksomheten

Regelverk som det ble informert om:

- Lov om vern mot forurensninger og om avfall (forurensningsloven)
- Forskrift om begrensnig av forurensning (forurensningsforskriften)
- Forskrift om gjenvinning og behandling av avfall (avfallsforskriften)
- Forskrift om systematisk helse-, miljø- og sikkerhetsarbeid i virksomheter (internkontrollforskriften)

Brosjyrer/infoark utdelt:

- Gebyr ved kontroll (M-297)

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The county governor of Oslo and Viken

Place: Oslo Date: October 24, 2019

Our ref. (Please state by answer): 2019/50837 Their ref. : Roger Fredriksen

FREDRIKSTAD SEAFOODS AS c / o Øra Industripark AS, Øraveien 2 1630 Gamle Fredrikstad

Case manager: Anette Strømme

Inspection report Inspection at Fredrikstad Seafoods AS - Land-based salmon farming Control number: 2019.045.I.FMOV

Inspection report Inspection at Fredrikstad Seafoods AS - Land-based salmon farming Control number: 2019.045.1.FMOV

Contact persons at the inspection: From the company: Roger Fredriksen

From the County Governor of Oslo and Viken: Anette Strømme

Other participants from the company: Simen Haaland

Other participants from the County Governor of Oslo and Viken: Marte Rosnes

Results from the inspection This report deals with the result from the inspection at Fredrikstad Seafoods AS - Land-based salmon farming (Fredrikstad Seafoods AS) on 16.10.2019. The report is considered final if we do not receive feedback on actual errors within two weeks of receiving the report.

The county governor of Oslo and Viken revealed 6 non-conformities and gave 2 remarks during the inspection.

Deviation:

Fredrikstad Seafoods AS lacks emission control

Fredrikstad Seafoods AS lacks monitoring of recipient

Fredrikstad Seafoods AS lacks action plan for risk-reducing measures

Fredrikstad Seafoods AS must risk assess all conditions at its lye tank

Fredrikstad Seafoods AS lacks routine for waste declaration

Fredrikstad Seafoods AS lacks energy management system

Remarks:

Fredrikstad Seafoods AS's deviation system can be improved

Fredrikstad Seafoods AS's notification routines can be improved

1. Information about the controlled business

Responsible unit Name: FREDRIKSTAD SEAFOODS AS

Organization no. : 913245873

Owned by: 913235967

Industry no. (NACE code): 03.211 - Production of food fish, molluscs, crustaceans and echinoderms in marine and coastal aquaculture

Controlled unit Name: Fredrikstad Seafoods AS - Land-based salmon farming Municipality:

Fredrikstad Construction activity: Salmon fish production on land Permit granted: 30.10.2015

Construction no. : 0106.0174.04 County: Østfold

Last changed:

2. Background for the inspection The inspection was carried out to check whether the applicable requirements laid down in or pursuant to the Pollution Control Act are complied with. The inspection is part of the County Governor's risk-based industrial inspection for this year.

The audit was carried out in accordance with the Pollution Control Act § 48.

Inspection topic • Permit dated 30.10.2015

(permit no: 2015.0720.T)

Internal control Process and cleaning equipment

••

Emissions to water Emissions to air Waste Chemicals

The report deals with deviations and remarks that were discovered during the inspection and does not provide a complete condition assessment of the company's environmental work or environmental status.

Definitions Deviations: Failure to comply with requirements laid down in or pursuant to law.

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Note: A factor that the supervisory authorities believe is necessary to point out in order to safeguard the external environment, but which is not covered by the definition of non-conformance. Other matters: Cases that emerged during the inspection and that it may be useful for the company and caseworkers to know. This may also include comments on topics that were raised during the inspection, but where no deviations or remarks were made.

Follow-up after the inspection Fredrikstad Seafoods AS is obliged to rectify the deviations described in this report as soon as possible. In order for the County Governor to be able to close the case, Fredrikstad Seafoods AS must send a written statement by 31 January 2020 showing how deviations have been corrected.

We ask that you send the reply letter or e-mail (fmovpost@fylkesmannen.no) to the County Governor of Oslo and Viken by Anette Strømme.

4. Decision on fees We refer to notice and information about the fee obligation that was given to the company on 20 September 2019. Companies must pay a fee for inspections carried out by the County Governor in accordance with § 39-3 of the Pollution Control Regulations. The fee shall cover costs of preparation, implementation and follow-up of the inspection. Fee rates for control of businesses according to the Pollution Control Act are stipulated in the Pollution Control Regulations §§ 39-7 and 39-8.

On the basis of used and expected use of resources, Fredrikstad Seafoods AS will be charged a fee of NOK 26,300 for the inspection, cf. the pollution regulations §§ 39-7 and 39-8. This corresponds to fee rate 2 for inspections of up to one day's duration. The company will receive an invoice from the Norwegian Environment Agency for payment to the Treasury. We also refer to Chapter 39 of the Pollution Control Regulations for further information on the collection of fees to the Treasury.

Right of appeal The decision on a fee may be appealed to the Norwegian Environment Agency, cf. section 28 of the Public Administration Act. Any complaint should be justified in writing and addressed to the Norwegian Environment Agency, but sent via the County Governor of Oslo and Viken. The county governor will consider changing the decision or forward the case to the Norwegian Environment Agency for a final decision. Any complaint will not have a suspensive effect, and the fee stipulated above must be paid. If the Norwegian Environment Agency accepts the complaint, the overpaid amount will be refunded.

5. Access This report will be available to the public via the postal journal of the County Governor of Oslo and Viken (cf. the Public Administration Act).

6. Deviations We found the following deviations during the inspection:

Deviation 1 Fredrikstad Seafoods AS lacks emission control
Deviation from:

The permit pursuant to the Pollution Control Act for the operation of a land-based aquaculture facility dated 30.10.2015 (the permit), item 11 Emission control and reporting to the pollution authority.

Comments: The permit required Fredrikstad Seafoods AS to have discharge control. The company will carry out measurements of emissions to air and water. Measurements include volume flow measurement, sampling, analysis and calculation. The measurement program must be included in the company's documented internal control.

Measurements shall be performed so that they are representative of the company's actual emissions and shall as a minimum include:

Components that are explicitly regulated through limit values in

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the permit or regulations. Other components that are covered by the reporting obligation in accordance with the Norwegian Environment Agency's guide to the companies' own control reporting

Fredrikstad Seafoods AS 'measurement program for its emissions is deficient. The results from measurements of effluent are not calculated and the company lacks an overview of its discharge to the municipal wastewater network.

Fredrikstad Seafoods AS does not take measurements of sludge that they release on the municipal wastewater network. Fredrikstad Seafoods AS has a discharge agreement with Fredrikstad municipality and the sludge goes to the Frevar sewage treatment plant on Øra. As the company does not take samples of the sludge, they thus also do not know whether they are complying with the discharge agreement with Fredrikstad municipality.

Deviation 2 Fredrikstad Seafoods AS lacks monitoring of the recipient

Deviation from: Permit point 12 Monitoring of recipient with reporting to the pollution authority.

Comments: The permit requires Fredrikstad Seafoods AS to carry out regular inspections and monitoring of Glomma. The monitoring can be carried out in-house or in collaboration with others who carry out monitoring in the same area.

The company does not have a routine / plan for monitoring according to the water regulations in Glomma and has not taken samples in the recipient.

The results of the monitoring shall be entered in the Aquatic Environment Database. All sampling results in the recipient must be entered in the subject database Water Environment to contribute to increased information about the environmental condition of the recipient. A good knowledge base is important for further work with water management and follow-up of the water regulations.

The county governor can, if necessary, contribute to creating new localities in the Aquatic Environment for the relevant test points. The laboratory used can enter the analysis results directly into the form which is then imported into the Aquatic Environment. The import form to be used for entering data can be downloaded from Vannmiljø.

Deviation 3 Fredrikstad Seafoods AS lacks an action plan for risk-reducing measures

Deviations from: The permit section 10.2 Preventive measures. Regulations on systematic health, environmental and safety work in enterprises (Internal Control Regulations) § 5 items 6 and 8.

Comments: The permit and the internal control regulations require that an environmental risk assessment be prepared to identify hazards and problems and on this basis assess risk. On the basis of the environmental risk analysis, an action plan shall be prepared with measures that reduce the risk conditions with set deadlines for implementation, as well as who is responsible for implementing risk-reducing measures. This shall be part of the company's internal control and shall be audited regularly to ensure that the internal control, including environmental risk assessment and action plan, functions as intended.

Fredrikstad Seafoods AS has prepared an environmental risk assessment and has several risk-reducing measures, but lacks an overall action plan.

Deviation 4 Fredrikstad Seafoods AS must risk assess all conditions at its lye tank

Deviations from: Pollution Control Regulations (Pollution Regulations) Chapter 18 Tank Storage of Hazardous Chemicals and Hazardous Waste (Tank Storage Regulations) § 18-4 Environmental Risk

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Comments: The tank storage regulations require that the environmental risk analysis must include all conditions during tank storage, including the tank, barrier, connected pipes and equipment and more. The environmental risk assessment shall also include an assessment of the vulnerability of the environment that may be affected by pollution from tank storage. Fredrikstad Seafoods AS has a 15 m³ tank with lye. The company has a risk assessment for filling lye, but lacks a risk assessment of all other conditions during tank storage

Deviation 5 Fredrikstad Seafoods AS lacks a routine for waste declaration

Deviation from: Permit point 9 Waste and sludge. Regulations on recycling and treatment of waste (Waste Regulations) Chapter 11 Hazardous waste, § 11-8 Obligation to deliver and § 11-12 The companies' declaration obligation on the content of the waste.

Internal Control Regulations § 5 2nd paragraph item 7.

Comments: From Fredrikstad Seafoods AS's facility, hazardous waste is generated, such as waste oil, oil-contaminated material and chemicals. Hazardous waste was stored in marked containers in a closed container. The company's routine for hazardous waste has not been updated with regard to storage, electronic declaration and delivery of hazardous waste.

The hazardous waste must be delivered to legal reception at least once a year and declared in avfallseklarerings.no upon delivery. The obligation arises when the total amount exceeds 1 kg.

Deviation 6 Fredrikstad Seafoods AS lacks an energy management system

Deviation from: The permit section 8.1 Energy management system

Comments: The permit requires the company to have a system for continuous assessment of measures that can be implemented to achieve the most energy-efficient production in the facilities. The energy management system must be in writing and included in the company's internal control.

During the audit, the company could not document that they have an energy management system.

7. Remarks The following conditions were noted during the inspection:

Note 1 Fredrikstad Seafoods AS's deviation system can be improved

Comments: Fredrikstad Seafoods AS has a deviation system. Definition of what a deviation is, as well as a written routine for handling deviations can be improved. **Incidents such as neighbor complaints about noise are not captured in the current non-conformance handling.**

Follow-up of nonconformities can be improved by setting up those responsible for closing each nonconformity.

Note 2 Fredrikstad Seafoods AS's notification routines can be improved

Comments: Fredrikstad Seafoods AS has not included notification of Fredrikstad municipality in the event of extraordinary discharges to the municipal wastewater network that goes to the Frevar wastewater treatment plant on Øra.

8. Other matters Fredrikstad Seafood AS started production in May 2019. Production was in the start-up phase with 90 tonnes of total biomass under supervision. The plant is designed for 2400 tonnes of biomass per year, divided into two modules.

A possible expansion of the plant is planned with increased biomass and its own slaughterhouse. An updated application with actual conditions must be sent to the County Governor of Oslo and Viken before the plant expands or at the start of the slaughterhouse / smolt plant.

9. Documentary basis The legal basis for the inspection was:

. Act on protection against pollution and on waste (the Pollution Control Act) with

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underlying regulations

Regulations on the limitation of pollution (the Pollution Control Regulations) • Regulations on the recycling and treatment of waste (the Waste Regulations) • Regulations on systematic health, safety and environmental work in enterprises (Internal Control Regulations) Permit for activities pursuant to the Pollution Control Act from the County Governor dated 30.10.2015 (permit no: 2015.0720.T)

10. Information to the company Regulations about which it was informed:

• Act on protection against pollution and on waste (the Pollution Control Act) • Regulations on the limitation of pollution (the Pollution Control Regulations) • Regulations on the recycling and treatment of waste (the Waste Regulations) • Regulations on systematic health, safety and environmental work in enterprises (internal control regulations)

Brochures / info sheets distributed:

• Fee at inspection (M-297)

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On the same day as the last BEP and Planning Board Meeting, November 19, 2020 there was a CMP/PUC/OPA summit to discuss the current power loads and demands on CMP's local transmission Line 80 (also called Section 80).

It is now clear that Nordic Aquafarms is not telling the Planning Board everything it anticipates with respect to its impact on the area's power supply, or all it knows about what CMP will require with respect to its limitations of supply from CMP for the load during normal-normal operations, peak-normal operations, normal-outage conditions, or peak-outage conditions. Please note that "outage" includes not just local outages but outages of one or more of the sections that are interconnected with CMP Section 80 (the local line).

1. **NORDIC AQUAFARMS HAS SUBMITTED STUDIES TO THE STATE OF MAINE AND CMP AS PART OF ITS REQUIRED INTERCONNECTION APPLICATION, SO WHY CAN'T THEY ANSWER THE PLANNING BOARD POWER USAGE QUESTIONS?** In a letter from the State of Maine, Office of the Public Advocate, to the Maine PUC on July 24, 2020 regarding Central Maine Power Company, Request for Approval of Non-Transmission Alternative (NTA) Pilot Projects for the Mid-Coast and Portland Areas, Docket No. 2011-00138, it states: *"The timing of implementation of CMP's Section 80 rebuild is based on the request for interconnection by Nordic Aquafarms. To fulfill the statutory mandate of 35-A M.R.S.A. §3132-A and analyze cost effective NonWires Alternatives (NWA), it is critical to understand Nordic Aquafarm's operations as they integrate with the greater transmission and distribution system..."*

SUMMATION: Nordic Aquafarms is proposing 14 MW of power generation and has a significantly large power demand/supply and therefore must complete a CMP interconnection Study. The Interconnection study options include Feasibility Study, System Impact Study, and/or Facilities Study. CMP will process the interconnection request/application, arrange for a scoping meeting, and prepare an interconnection study agreement. The Generator will provide any necessary upfront deposits. A supplemental study may be required if one or more system impact study criteria are violated and cannot be resolved with CMP's standard construction practices or standard equipment. The Generator shall be responsible for all costs and expenses associated with a supplemental study. The interconnection study process will result in a final report that will determine the feasibility and/or system impact to the EPS and identify any required system enhancements. It is extremely reasonable for the Planning Board to request the data, analysis, study or correspondences and records of these studies.

2. **NORDIC AQUAFARMS NOT ONLY HAS ESTIMATED ITS ELECTRICAL NEEDS TO STATE PUBLIC AGENCIES, IT HAS BEEN DISCUSSING REQUIREMENTS TO OFFSET THOSE QUANTIFIED ELECTRICITY NEEDS WITH STATE OFFICIALS FOR AT LEAST EIGHT MONTHS.** In the same letter from the State of Maine, Office of the Public Advocate, to the Maine PUC on July 24, 2020 regarding Central Maine Power Company, Request for Approval of Non-Transmission Alternative (NTA) Pilot Projects for the Mid-Coast and Portland Areas, Docket No. 2011-00138, it also states: *"...The NWA Coordinator, DNV GL identified its interests in the Nordic Aquafarms load characteristics in its March 18, 2020 data requests and the follow up discussion has continued to date."*

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SUMMATION: As a result of Nordic's interconnect request, the PUC third-party consultant, a specialty firm hired to assess alternatives to immediately rebuilding the Section 80 line, asked Nordic 8 months ago (March 18, 2020) for their normal and peak power demands, something the Planning Board has been asking for at least as long, and as of at least 4 months ago, the consultant for CMP has received this information and has had discussions with Nordic about how these normal and peak power needs could be met in both normal and outage situations. It is extremely reasonable for the Planning Board to request the data and analysis, along with the correspondences and records of these discussions about redundancy needs, as part of its assessment on the proposed project's direct impact on Belfast and Northport.

3. **CMP HAS DETERMINED THAT THEIR GRID CANNOT SUPPLY NORDIC AQUAFARMS ELECTRICITY DEMANDS IN NORMAL PEAK AND OUTAGE SCENARIOS.** On Page 5, of the MAINE NON-WIRES ALTERNATIVE COORDINATOR REPORT [REDACTED] for Central Maine Power Midcoast Section 80 Non-Wires Analysis Report, Docket No. 2011-00138 from the Maine Office of the Public Advocate, dated 21 September 2020 it states: there is a small section on Nordic Aquafarms. June 5, 2020 draft..... *"On January 21, 2020, CMP requested the PUC schedule a case conference to discuss the need to upgrade Section 80, and address reliability needs in the Midcoast area. CMP stated an immediate need to rebuild Line 80 in response to Nordic Aquafarms' new customer interconnection request. Nordic Aquafarms is a new oqua culture salmon farm facility to be located in Belfast Maine. CMP stated that this interconnection will require the rebuild of Line 80 to meet certain contingencies at peak load level conditions."*

SUMMATION: The towns around this proposed project already have capacity and redundancy issues because of the significant coastal development over the last few decades. Furthermore, as we all know, the exact location where Nordic has proposed its facility was not previously zoned for heavy industrial use. As a result, the power demand assumptions for this area have always been open space, agricultural, residential, and some light industrial. Simply put, the balance between supply and demand was tipping towards a necessary supply upgrade in the near future because of growth, but Nordic's heavy industrial demand simply would blow that balance out of the water and tip the scales immediately towards violations in required redundancy, and significantly more outages. As a result, the Planning Board must consider that everything Nordic has suggested about their emergency power needs and their desire to "help out" CMP during peak shaving periods is simply not completely accurate. What is truthful is that Nordic's project forces the expenditure of many, many millions of CMP's expansion dollars right away, if CMP cannot find another possible approach to obtain this redundancy (i.e. Nordic's proposed power plant.) It is very reasonable for the Planning Board to ask for the specifics of operation to ensure that the power plant will available during unsettled times to both Nordic and the area. In other words, Nordic is not just committing to their own power, but regional power production as well when required.

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4. THE GRID CANNOT SUPPLY NORDIC AQUAFARMS ELECTRICITY DEMANDS IN NORMAL PEAK AND OUTAGE SCENARIOS SO SOMETHING ELSE MUST BE DONE. On Page 9, of the MAINE NON-WIRES ALTERNATIVE COORDINATOR REPORT [REDACTED] for Central Maine Power Midcoast Section 80 Non-Wires Analysis Report, Docket No. 2011-00138 from the Maine Office of the Public Advocate, dated 21 September 2020 there is a small section on Nordic Aquafarms. It states (with redaction): *"Nordic Aquafarms is a first-of-its-kind large-scale recirculating aquaculture system that is currently being constructed. This project was cited in CMP's initial claim that Section 80 needs to be rebuilt immediately, due to the potential for increased demand on the grid during extreme weather conditions (see Section 1.1). [REDACTION] CMP's analysis does not include this generator in the study area."*

SUMMATION: Although this statement erroneously suggests that Nordic Aquafarms is currently under construction, more importantly, this statement reiterates that without rebuilding the Section 80 line immediately, there will be an unacceptable added number of, more frequent, and much longer power outages in our future in an operating scenario when one or more of our local lines are out of service. It then indirectly suggests (or possibly directly in the redacted information) that the on-site generators, if they are allocated to CMP as an extension of the CMP system, when needed, that this Section 80 rebuild could be delayed for a few years. But there are no specifics to what type of commitment Nordic is expected to make and how it can operate its facility properly and effectively at whatever reduced operations are required/discussed in the redacted information. again, it is not unreasonable for the Planning board to require Nordic Aquafarms to provide this information for the Planning Board to review.

5. THE GRID CANNOT SUPPLY NORDIC AQUAFARMS ELECTRICITY DEMANDS IN NORMAL PEAK AND OUTAGE SCENARIOS SO SOMETHING ELSE MUST BE DONE. In a CMP summary slide show dated November 19, 2020 from the NWA Summit Meeting, there is a discussion for Section 80 on Page 4 in table form. The first topic is: *"Per Option 3, pursue a NWA agreement with both Nordic Aquafarms and George's River Energy generation to reduce area load during contingency conditions because Section 80 is interconnected with a number of other shared loads."* And then there are two bullets with the first dedicated to Nordic with the following to which Nordic must agree: *"Nordic Aquafarms to curtail their demand to no higher than 10MW by running their 14MW emergency generator or curtailing their load under certain conditions. These would be post-contingency actions (operator action following loss of Section 86 or Section 204 or Section 226)."*
6. SUMMATION: This is the first time that anything specific with respect to what Nordic would need to do in one of these situations has been discussed. What this bullet suggests is that Nordic will need to get partially or fully off of the grid not just when its power supply line, Section 80, is out of service, but when Section 86 or Section 204 or Section 226 are as well. This means that Nordic really is no longer simply an Aquafarms Facility with a back-up generator system, but is now expected to be a regional power plant at times. This regional need is 100% outside of their control and calls into question how Nordic has designed this system and provided redundancy for their system. It also calls into question their "voluntary" offer to limit their fuel. Will that be enough to meet their currently undefined emergency needs, the emergency needs of the other

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interconnected lines, their peak demand needs (i.e. demands over 10 MW), and true peak shaving scenarios that are required for "*curtailing their load under certain conditions*" as summarized broadly above.

In addition we must remember that during permitting, the Applicant changed their approach to power and HVAC for their ancillary (non-fish farming utility's needs) from localized combustion units for process and HVAC needs to relying on electricity to power everything 100% of the time. How can a facility possibly meet its original needs, add more demand by converting all of its ancillary power and ventilation needs to 100% electric power, reduce its load on the grid on demand of CMP, and still maintain compliance with all of their state-of-the-art environmental promises. It is simply hard to believe that math works. It is completely reasonable for the Planning Board to request the math (the assumptions and calculations) that suggests that they can meet both their needs and the regional power needs. If not, then clearly Nordic Aquafarms should finance a significant portion of the added redundancy created by this facility before the permit approval.