

STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

Susan M. Lessard, Chair

William F. Hinkel  
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Ruth Ann Burke  
Board Clerk

July 14, 2023

**SENT VIA ELECTRONIC MAIL ONLY**

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**Re: Remand and related judicial actions; Petition of Upstream Watch to revoke; Motion of Mabee-Grace, *et al.* to vacate; and Petition of Friends of the Harriet L. Hartley Conservation Area to intervene in future proceedings related to the licenses issued to Nordic Aquafarms, Inc.**

Dear counsel for parties to the Law Court appeal:

This correspondence serves to: 1) summarize recent remand and related judicial actions and filings with the Board of Environmental Protection (“Board”); 2) identify next steps to be taken by the Board on remand; and 3) circulate a service list to be utilized in the filing of all further documents with the Board related to its proceedings on remand.

**1. Recent judicial actions and filings with the Board**

On May 10, 2023, the Maine Supreme Judicial Court, sitting as the Law Court (“Law Court”), issued its Order of Remand<sup>1</sup> to the Maine Superior Court, Business & Consumer Docket (“BCD”), with further instructions to remand to the Board “so that the [Board] may determine the impact, if any, of *Mabee I* [*Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15, 290 A.3d 79] on the challenged approvals [combined Site Location of Development Law and Natural Resources Protection Act permit, Air Emission License, and combined Maine Pollutant Discharge Elimination System permit and Waste

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<sup>1</sup> Docket No. BCD-2022-48.

Discharge License]” that were issued by the Board on November 19, 2020 (“Nordic permits”). The Law Court left it to the Board to “determine the scope of the proceedings on remand.”

On May 15, 2023, the BCD issued its Order on Remand<sup>2</sup> consistent with the Law Court’s Order of Remand, noting that the Board “may determine its scope of proceedings on remand including whether it will take additional evidence.”

On June 29, 2023, the Law Court denied the Board’s motion to reconsider and stay the effect of the mandate of the Law Court’s Order of Remand.

On July 5, 2023, attorney Tucker, as counsel for the Friends of the Harriet L. Hartley Conservation Area (“Friends”), filed with the Board a motion to intervene in Board proceedings related to the BCD’s Order of Remand.

Also on July 5, 2023, attorney Tucker, as counsel for Jeffrey R. Mabee and Judith B. Grace, the Maine Lobstering Union, commercial crab and lobster license holders David Black and Wayne Canning (“Mabee-Grace, *et al.*”), and Friends filed with the Board a motion to vacate the Nordic permits.

On July 7, 2023, attorneys Losee and Perkins, as counsel for Upstream Watch, filed with the Board a petition to revoke the Nordic permits.

## **2. Next steps**

Given the Law Court’s denial of the Board’s motion to reconsider the Law Court’s Order of Remand, the Board will be determining the scope of and process for the proceedings on remand before it.

### Designation of Presiding Officer

The Department administers the National Pollutant Discharge Elimination System program in Maine, including the issuance of permits pursuant to the federal Clean Water Act, which are referred to as Maine Pollutant Discharge Elimination System (“MEPDES”) permits. Pursuant to 38 M.R.S. § 341-C(8), no Board member may participate in the review of or act on an application for a MEPDES permit or the modification, renewal or appeal of a MEPDES permit if the Board member receives, or during the previous 2 years has received, a significant portion of income directly or indirectly from MEPDES permit holders or applicants. Board Chair Susan Lessard is conflicted from participating in Board proceedings related to Nordic’s MEPDES permit. Consequently, Chair Lessard has designated me, Board member Robert Duchesne, to serve as the Presiding Officer for all aspects of this remand proceeding with respect to all Nordic permits.

### Scope and process of proceedings and rulings on existing Board filings

In forthcoming correspondence from me, the Board will: 1) outline the process it will utilize for this remand proceeding; 2) define the scope of the proceedings, including what additional filings will be

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<sup>2</sup> Docket No. BCD-APP-2021-009.

permitted; and 3) address the filings already submitted by Mabee-Grace, *et al.*, Friends, and Upstream Watch. Until this forthcoming correspondence issues, all persons are asked to refrain from further filings with the Board.

### 3. Service list

Following issuance of the forthcoming correspondence described above, all further filings in this matter on remand must be copied to the enclosed service list. It is the responsibility of those on the list or their representative to circulate filings to others not on the list, including organization members, as they see fit. Any revisions to the service list made by the Board will be circulated to the list as revised.

If you have any questions, you may wish to await my forthcoming correspondence, or you may contact Board Executive Analyst William F. Hinkel at [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov) or (207) 314-1458 or Assistant Attorney General Peggy Bensinger at [peggy.bensinger@maine.gov](mailto:peggy.bensinger@maine.gov) (207) 626-8578.

Sincerely,



Robert Duchesne  
Presiding Officer  
Board of Environmental Protection

cc: Service List (July 14, 2023)

***Enclosure(s)***

**Board of Environmental Protection**

***Filings with the Board must be directed to Ruth Ann Burke and, unless otherwise specified, are due by 5:00 p.m. on the filing date. Untimely filings may be rejected.***

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